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

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री जगदीश, लेखा सदस्य **के समक्ष**

BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI JAGADISH, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA No.2174/Chny/2024**
निर्धारणवर्ष/**Assessment Year: 2017-18**

M/s. The India Cements Ltd., No.93, Coromandel Towers, Santhome High Road, R.A. Puram, Chennai-600 028.	**v.**	The DCIT, Corporate Cirlce-2(1), Chennai.
[**PAN: AAACT 1728 P**]		
(अपीलार्थी**/Appellant)**		**(**प्रत्यर्थी**/Respondent)**
अपीलार्थी की ओर से/ Appellant by	:	Mr.R. Vijayaraghavan, Advocate & Mr.Vikram Vijayaraghavan, Advocate
प्रत्यर्थी की ओर से /Respondent by	:	Mr.Nathala Ravi Babu, CIT
सुनवाईकीतारीख/Date of Hearing	:	15.10.2025
घोषणाकीतारीख /Date of Pronouncement	:	02.01.2026

आदेश / O R D E R

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Learned Commissioner of Income Tax (Appeals) NFAC, (hereinafter referred to as 'Ld.CIT(A)'), Delhi, dated 18.06.2024 for the Assessment Year (hereinafter referred to as 'AY') 2017-18.

2. Ground No. 1 of the appeal is general in nature which doesn't require any adjudication and is therefore dismissed.

3. Ground No.2 raised by the assessee relates to the disallowance of ₹1,07,44,451/- made by the AO u/s 14A of the Income Tax Act 1961 (herein after the Act) in terms of Rule 8D of the Income Tax Rules 1962 (herein after the Rules). Briefly stated, the AO had observed from the balance-sheet that the assessee held substantial investments which were capable of yielding tax-free income and therefore, according to him, the expenditure incurred in relation to earning such exempt income was to be disallowed under Section 14A of the Act. The AO inter alia also observed that, the assessee didn't derive any dividend income from these investments, but had claimed profit to the extent of ₹1,07,44,451/- earned from sale of Mutual Funds as exempt u/s.10(39) of the Act. The AO accordingly show caused the assessee to explain as to why expenditure incurred for earning such exempt income should not be disallowed, in accordance with Rule 8D. In response, the assessee explained that, the investments which yielded exempt-income were made out of own funds, and therefore pleaded that no disallowance should be made u/s 14A of the Act. The AO however didn't agree to the objections raised by assessee and for the reasons elaborately set out in the assessment order, computed disallowance of ₹1,07,44,451/- under Rule

8D, which was added back both while computing income under normal provisions as well as book profit u/s 115JB of the Act. On appeal, the Ld. CIT(A) confirmed the action of the AO by relying on CBDT Circular No.5/2014. Aggrieved, the assessee is in appeal before us.

3.1 Heard both the parties. At the outset, the Ld. AR pointed out that, this Tribunal in assessee's own case for AY 2013-14 [in ITA Nos.2038 & 2210/Chny/2017 & ITA No.737/Chny/2018] vide order dated 18.08.2021, had held that, only those investments which yielded exempt income was to be considered for the purposes of computing disallowance under Rule 8D, by observing as under :-

> "6.1 Having heard both the sides and considered material on record, we find that an identical issue has been considered by the Co-ordinate Bench of ITAT, Chennai in assessee's own case for assessment years 2007-08 in ITA Nos.1343/Mds/2010, where the Tribunal held that, only those investments which yielded exempt income shall be considered to disallow 0.5% of average value of investment, the income from which does not form part of total income. We further noted that ITAT, Delhi Special Bench in the case of ACIT vs. Vireet Investment Pvt. Ltd., 58 ITR (Trib) 313 had considered an identical issue and held that only those investments which yielded exempt income for the year needs to be considered for computing disallowance of 0.5% of the average value of investment. The ld.CIT(A) after considered relevant facts has rightly directed the AO to re-compute disallowance by taking those investments which yielded exempt income for the year. Therefore, we are of the considered view that there is no error in the findings of the ld.CIT(A) and hence, we are inclined to uphold the findings of ld.CIT(A) and reject ground taken by the Revenue."

3.2 The Ld. DR appearing for the Revenue however pointed out that, Rule 8D was amended by the IT (Fourteenth Amdt.) Rules, 2016, w.e.f. 2-6-2016, in terms of which the erstwhile Rule 8D(2)(ii) was omitted and Rule 8D(2)(iii) was renumbered as Rule 8D(2)(ii), and the computation

methodology was changed from 0.5% of the average of opening and closing value of investments to 1% of the monthly average of the investments. He thus urged that, the disallowance ought to be computed with reference to the amended Rule 8D which was applicable for AY 2017-18

3.3 We find that the case of the assessee is squarely covered by the decision rendered by this Tribunal in the assessee's own case (supra), and following the same, we hold that, the disallowance in terms of Rule 8D was required to be computed with reference to only those investments which yielded the exempt income of ₹1,07,44,451/- during the relevant year. Having regard to the amended Rule 8D, the AO is directed to re-compute and restrict the disallowance to 1% of the monthly average of exempt income yielding investments. Needless to say, the assessee shall provide the relevant month-wise details of investments to the AO to enable him to re-compute the disallowance.

3.4 In so far as the issue relating to disallowance computed u/s 14A r.w. Rule 8D, while computing book profit u/s 115JB is concerned, we find that this issue is no longer res integra in view of the decision rendered by this Tribunal in the assessee's own case (supra), wherein it was held as under:

> 10. The next issue that came up for our consideration from Ground No.3 of assessee appeal is re-computation of book profit u/s.115JB of the Act, by making additions towards disallowance u/s.14A r.w.r. 8D of the Rules. The AO has computed disallowance u/s.14A of the Act of Rs.1,46,18,000/- and has made additions to book profit computed u/s.115JB of the Act.
>
> 10.1 The ld.AR for the assessee submitted that the issue is covered in favour of the assessee by decision of the ITAT in assessee's own case in ITA Nos.2414, 2415 & 2416/Chny/2019 dated 12.12.2019 for assessment years 2014-15 to 2016-17, where the Tribunal by following decision of ITAT, Delhi Special Bench in the case of ACIT vs. Vireet Investment Pvt. Ltd., 58 ITR (Trib) 313 had held that "computation under Clause (f) of the Explanation -1 to Section 115JB(2) is to be made without resorting to the computation as contemplated u/s.14A r.w.rule.8D of the Rules".
>
> 10.2 The ld.DR on the other hand agreed that the issue is squarely covered in favour of the assessee.
>
> 10.3 We have heard both the parties, perused materials available on record and gone through orders of the authorities below. We find that the Tribunal has considered an identical issue in assessee's own case for assessment years 2014-15 to 2016-17 in ITA Nos.2414, 2415 & 2416/Chny/2019 and by following decision of ITAT, Delhi Special Bench in the case of ACIT vs. Vireet Investment Pvt. Ltd., supra, held that "computation under Clause (f) of the Explanation -1 to Section 115JB(2) is to be made without resorting to the computation as contemplated u/s.14A r.w.rule.8D of the Rules". Therefore, we direct the AO to delete addition made towards disallowance u/s.14A r.w.rule 8D to book profit computed u/s.115JB of the Act.

3.5 Respectfully following the above binding decision (supra), we direct the AO to delete addition made on account of disallowance u/s.14A r.w.rule 8D to the book-profit computed u/s.115JB of the Act. Ground No. 2 is therefore partly allowed.

4. Ground No. 3 raised by the assessee is against the disallowance of proportionate interest on borrowings in relation to the interest-free advances given by the assessee. The AO is found to have noted that, the assessee had debited a sum of ₹36,045.91 lakhs on account of Interest and Other borrowing costs to the Profit and loss account. The AO further observed that the assessee has advanced certain amount to its

subsidiaries, but did not credit any interest on such amounts advanced to the subsidiaries. The AO drew up a comparative chart of the interest-free advances given by the assessee to its subsidiaries in FYs 2015-16 and 2016-17 which is as under:-

Advance to Subsidiaries (Amount - Rs. Lakhs)

Company Name	Bal. as on 31-3-16	Bal. as on 31-3-17
ICL Financial Services	3523.94	3634.99
ICL Securities Ltd.	0.21	(1996.38)
ICL International Ltd.	0	0
Industrial Chemicals and Monomers Ltd	1480.83	1508.00
Total	**5,004.98**	**3146.61**

4.1 According to the AO, the interest cost corresponding to these interest-free advance given to the subsidiaries was required to be disallowed and added back as in the earlier assessment years; and he therefore computed disallowance of ₹24,95,76,400/-. On appeal, the Ld.CIT(A) upheld the AO's action of making the impugned disallowance. Aggrieved, the assessee is before us.

4.2 The Ld. AR submitted that, the assessee had given interest-free advances to its subsidiaries, which were essentially extension(s) of the assessee and were carrying on similar business and therefore the advancement of monies was driven on the principle of commercial-expediency because the assessee had both strategic and economic interests in their well-being and operations. It is therefore the assessee's case that, even if the interest free advances were given out of borrowed

capital, the fact remained that it was advanced in the course and for the purposes of business and therefore the corresponding interest paid on borrowings was allowable u/s 36(1)(iii) of the Act. Anyway, it was also brought to our notice that, the impugned disallowance was even otherwise unwarranted because, the assessee had sufficient own funds to cover the average balance of interest-free-advances of ₹311.97 Crs. According to the assessee therefore, it was to be presumed that the advanced amount were given out of the own-interest-free funds available with the assessee and hence, even otherwise, no disallowance can be made on account of interest. Per contra, the Ld DR supported the action of Ld CIT(A) and doesn't want us to interfere.

4.3 We have heard both the parties and perused the material available on record. It is seen that, the assessee had own funds comprising of capital, reserve & surplus of ₹5,109.9 Crs. which was far in excess of the average balance of interest-free-advances of ₹311.97 Crs. The Ld. AR has rightly pointed out that, the Hon'ble Supreme Court in the case of **CIT v. Reliance Industries Ltd., reported in [2019] 102 taxmann.com 52 (SC)** has held that, where the amount of any interest- free loans given is sufficiently covered with the non-interest-bearing fund available with the assessee, then the question of disallowance of interest on borrowed fund does not arise. We find that identical disallowance was made by the AO in

the earlier year(s) as well and this Tribunal had deleted the same in the consolidated order passed for AYs 2007-08 to 2011-12 by their order dated 01.01.2016 wherein at Para No.10, it was held as under:

> 10. We have considered the rival submissions on either side and also perused the material available on record. As rightly submitted by the learned counsel for the assessee even if the borrowed funds were diverted for making advances to subsidiary companies, this Tribunal is of the considered opinion that there cannot be any addition of notional interest since it is not the case of the Revenue that the subsidiary companies had misused the funds for any other purpose. In other words, since the subsidiary companies used the funds for their business this Tribunal is of the considered opinion that in view of the judgment of the Apex Court in S.A. Builders (supra) there cannot be any addition in the hands of the assessee. A bare reading of the order of the CIT(A) shows that similar addition was made by the Assessing Officer in asst. yrs. 2003-04 and 2004-05. The CIT(A), however, deleted the addition. This Tribunal in ITA Nos. 778 & 779/Mds/2008 dt. 15th July, 2009 has confirmed an identical order of the CIT(A). In fact, the CIT(A), by following the decision of this Tribunal in assessee's own case for the asst. yrs. 2003-04 and 2004-05 and the judgment of the Apex Court in S.A Builders (supra) allowed the claim of the assessee. Therefore, this Tribunal do not find any reason to interfere with the order of the CIT(A). Accordingly, the same is confirmed.

4.4 Having regard to the position of own interest free funds and the average value of interest free advances, as noted above, we agree with the Ld. AR that, the presumption is that the assessee had given interest-free advances [₹311.97 crores] from its own funds [₹5,109.9 Crs]. Following the above decision (supra) rendered in assessee's own case, we direct the AO to delete the impugned disallowance. This ground is accordingly allowed.

5. Ground No. 4 relates to disallowance of depreciation of ₹2,66,22,000/- attributable to the fees paid to Dr. K. Venkatesan. The facts concerning this ground are that, the assessee had paid aggregate sum of ₹34 crores to Dr. K Venkatesan, a purported vastu expert across

AYs 2009-10 to 2011-12 which was capitalized to the cost of buildings in certain projects in Sankar Nagar, Parli and Chennai, and consequently depreciation was being claimed thereon. The assessee had made further payment of ₹6 crores to the same individual during the year, which was also capitalized to the block of building. Following the orders passed by his predecessors, the AO held that such expenses paid Dr. K.Venkatesan cannot be termed to be for business purposes and therefore disallowed the depreciation attributable to such expenditure. It is seen that, the Ld.CIT(A) confirmed the disallowance made by the AO by holding as under:

> "As held earlier, such expenses cannot be termed to be for business purposes and hence the depreciation on such expenditure is not to be allowed.
>
WDV as on 01.04.2012	Rs.3,400.00
Depreciation claimed	Rs.510.00
WDV as on 01.04.2013	Rs.2,890.00
Depreciation claimed	Rs. 433.50
WDV as on 01.04.2014	Rs.2,456.50
Depreciation claimed	Rs. 368.48
WDV as on 01.04.2015	Rs.2,088.00
Depreciation claimed	Rs. 313.20
WDV as on 01.04.2016	Rs.1,774.82
Depreciation claimed	Rs. 266.22
WDV as on 01.04.2017	Rs.1,508.89
>
> Therefore the disallowance of deprecation on this count is quantified at Rs.2,66,22,000/- The disallowance of Rs.2,66,22,000/- is confirmed.
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> 4. The assessee has been incurring substantial expenditure under this head year after year. Going from the submission in the past, it is seen that these are activities of performing homams etc. The payments as above cannot be classified as being wholly and exclusively for the purpose of the assessee's business.
>
> In any case, the Assessee's appeal on this issue has not found favour with Appellate Authorities in the past, as discussed earlier, the credibility of Vastu Consultant is not proved. There is no logical reason to prove that the payment was made for the purpose of business. It is not justified that if the payment would not have been incurred for conducting and performing certain rituals to Mr K Venkasan are exclusive to the Assessee. There is no tangible or intangible benefit to the Assessee with these payments. Rituals is

not scientifically proved and in fact because of this there is no tangible profit but assessee incurred only tangible loss as this payment is disallowed. Hence, Rs.6,00,00,000/- paid during the year to Mr K Venkatesan is disallowed as being not laid out wholly and exclusively for the purpose of business of the Assessee"

5.1 Aggrieved by the aforesaid action of Ld.CIT(A), the assessee is before us.

5.2 We have heard both the parties and perused the material available on record. Though the Ld. AR had pointed out that, this was a recurring issue and it was decided in assessee's favour by this Tribunal in their order dated 01.01.2016 for AYs 2007-08 to 2011-12, wherein the assessee was allowed deduction of ₹50 lakhs paid to Dr.K. Venkatesan of M/s.Rishi Vidhya Consultants Pvt. Ltd. The Ld. DR however brought to our notice that, this Tribunal had later on distinguished the aforesaid order and deviated therefrom in assessee's own case for AY 2013-14 by order dated 18.08.2021, wherein the Ld.CIT(A)'s action disallowing the payment made to Dr.K. Venkatesan was confirmed, by holding as under:

29. The next issue that came up for our consideration from Ground No.4 of cross objection filed by the assessee is disallowance of payment to Vasthu Consultant, M/s. Rishividya Consultants P Ltd. The ld.AR for the assessee submitted that this issue was decided against the assessee by the Tribunal in assessee's own case in ITA Nos.1343/Mds/2010, 604 & 1299/Mds/2012 and 237 to 239/Mds/2015.

29.1 We find that an identical issue has been considered by the Tribunal in assessee's own case for assessment years 2007-08 to 2011-12 in ITA Nos. 1343/Mds/2010, 604 & 1299/Mds/2012 and 237 to 239/Mds/2015, where the Tribunal had confirmed addition made by the AO towards payment made to M/s. Rishividya Consultants Pvt. Ltd. The relevant findings of the Tribunal are as under:-

"65. Now, coming to the payment made to M/s Rishi Vidhya Consultants Pvt. Ltd to the extent of Rs.2,50,00,000/-, this Tribunal has allowed the claim of the assessee for assessment year 2009-10 as revenue expenditure to the extent of Rs.50,00,000/-. It is not known why such a huge payment was

> made to the very same company M/s Rishi Vidhya Consultants Pvt. Ltd for the year under consideration. The assessee cannot make such a payment year after year in the name of vastu consultancy, therefore, it lacks bonafideness of the services rendered by M/s Rishi Vidhya Consultants Pvt. Ltd for the year under consideration. Hence, this Tribunal is of the considered opinion that the CIT(A) has rightly confirmed the addition made by the Assessing Officer for the year under consideration."

29.2 In view of the matter and consistent with view taken by the Co-ordinate Bench, we are of the considered view that there is no error in the findings recorded by the CIT(A) to confirm additions made by the AO towards disallowance of payment to vasthu Consultancy M/s. Rishividya Consultants Pvt. Ltd. Hence, we reject the ground taken by the assessee.

30. The next issue that came up for our consideration from Ground No.5 of cross objection filed by the assessee is depreciation charges on amount paid to consultant Dr. K. Venkatesan. The ld.AR for the assessee submitted that this issue is also held against the assessee in assessee's own case for earlier assessment years 2007-08 to 2011-12 in ITA Nos. 1343/Mds/2010, 604 & 1299/Mds/2012.

30.1 Having heard both the sides and considered material on record, we find that the Tribunal has considered an identical issue and after considering necessary facts has confirmed additions made by the AO towards depreciation charges on amount paid to consultant Dr. K. Venkatesan. The relevant findings of the Tribunal in ITA Nos. 1343/Mds/2010, 604 & 1299/Mds/2012 are as under:-

> "64. We have considered the rival submissions on either side and also perused the material available on record. Vastu is depending ITA No.1343 etc upon the belief of a particular individual/group of individuals. It may improve the productivity and profit or may not improve the productivity and profit of the company. But nobody could stand in the way of belief of a particular individual. At the very same time, the assessee cannot make such an exorbitant payment year after year on the ground that it is for business purpose. For the assessment year 2009-10, the assessee has made a payment of Rs.2,50,00,000/- to M/s Rishi Vidhya Consultants Pvt. Ltd. In the earlier part of this order, this Tribunal allowed the claim of the assessee to the extent of Rs.50,00,000/- on the ground that it would depend upon the individual belief of the businessman and when the services rendered were not doubted, no disallowance can be made. However, such a huge payment cannot be made year after year. When the assessee claims that payment of Rs. 2,50,00,000/- was made for assessment year 2009-10, it is not known why such a huge payment of Rs.75 lakhs was made to Dr. K. Venkatesan for the same services. The assessee is expected to incur certain expenditure on the belief that the art of vastu may increase the productivity or profit of the assessee. However, claiming such expenditure year after year cannot be for business purpose. Therefore, this Tribunal is of the considered opinion that payment for Rs.75 lakhs for the year under consideration to Dr. K. Venkatesan cannot be considered to be for business

> purpose. Therefore, the CIT(A) has rightly confirmed the disallowance."
>
> 30.2 In view of this matter and consistent with view taken by the Co-ordinate Bench, we are inclined to uphold the findings of the CIT(A) and reject ground taken by the assessee.

5.3 Respectfully following the later decision of the co-ordinate Bench of the Tribunal in the assessee's own case for AY 2013-14, we are inclined to uphold the impugned action of the Ld.CIT(A) and reject this ground taken by the assessee.

6. Ground No. 5 raised by the assessee is against the Ld. CIT(A)'s action of upholding the AO's order treating the subsidy received from the Government of Maharashtra for investing in backward area to by way of income instead of capital receipt not liable to tax. The facts as noted are that, the assessee company was granted subsidy by Government of Maharashtra for setting up new manufacturing unit in their State. Under this scheme, the subsidy was to be quantified as a percentage of the investments made in Plant and Machinery for setting up such new industrial undertaking in Maharashtra. The mode of disbursement of subsidy was that, the sales-tax collected on the sale of goods manufactured by the newly established unit was permitted to be retained by the assessee instead of being remitted to the State Government and such retained amount was to be adjusted and treated as subsidy granted by the State Government. The assessee has claimed that, the subsidy received in connection with setting up of a manufacturing unit at Parli

Unit, Maharashtra, constituted capital subsidies or incentives provided for the specific purpose of encouraging investment in setting up a new industrial undertaking in a backward area. Accordingly, it was contended that the receipt of subsidy was capital and not revenue in nature. Consequently, the assessee excluded the subsidy of ₹24,38,04,415/- from its taxable income. The AO however did not agree with this claim of the assessee and he added the subsidy of ₹24,38,04,415/- holding it to be taxable income, by observing as under:

> 9.1. In the Income computation statement, it is noted that the following items, being subsidies received from the State Governments of Maharashtra, Telengana and Rajasthan, were reduced by the assessee.
>
> - Capital Subsidy Parli - Sales tax incentive - Rs.1,98,48,000
> - Capital subsidy- Malkapur-Sales tax incentive - Rs. 4,03,25,924
> - Power Incentive-Malkapur - Rs.8,19,94,927
> - Capital subsidy-Rajasthan-Sales tax incentive - Rs. 10,16,35,564
>
> 9.2 The assessee was asked to show cause vide this office notice u/s 142(1) dated 19.08.2019 as to why the above items should not be treated as revenue receipts and the claim of deduction in the computation statement be not disallowed. The assessee submitted that the receipts relating to Parli Unit, Maharashtra, were in the nature of capital subsidy granted to the unit / incentive for investing in the backward area and hence, the same has been deducted from income for income tax purposes.
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> 9.3. The assessee's submissions are considered but not found to be acceptable. The issue is a settled one in view of the decision of Hon'ble Supreme Court in the case of Sahney Steel & Press Works Ltd - 228 ITR 253, wherein, the Apex Court held that payments from public funds to assist companies in carrying on trade or business revenue receipts. Accordingly, refund of power subsidies are operational subsidies and to be treated as revenue receipts. The above decision of Hon'ble Supreme Court is squarely applicable to the facts of the case.
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> 9.4. Further, on the issue of power subsidy, the Madras High Court, in the case of Brakes India Ltd v. JCIT - 363 ITR 13, held that power tariff concession was contingent upon commencement of production and to enable assessee to run business more profitably and hence, the same had to be treated as revenue receipt. This decision of the jurisdictional High Court is also squarely applicable to the facts of the case. Accordingly, The above subsidy amounting to Rs. 24,38,04,415/- is disallowed and added back to the total income.
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> Disallowance: Rs.24,38,04,415/-

6.1 On appeal, the Ld.CIT(A) is noted to have confirmed the action of the AO. Now the assessee is in appeal before us.

6.2 The Ld. AR appearing for the assessee has relied on the decision rendered by this Tribunal in their own case for AY 2013–14, in ITA No. 737/Chny/2018, wherein it was held that the subsidy received under the impugned State Industrial Scheme of Maharashtra was capital in nature. On the other hand, the Ld. DR invited our attention to the amendment made by the Finance Act, 2015, by way of insertion of clause (xviii) in section 2(24) of the Act, in terms of which, any and all subsidies, irrespective of its nature/purpose, has been defined to constitute taxable 'business income' u/s 28 of the Act. He thus urged that, the position of law had changed since AY 2013-14 and therefore according to him, the decision rendered in assessee's own case (supra) was no longer relevant and hence distinguishable.

6.3 Heard both the parties. Before we advert to the facts involved in the impugned issue, let us first take note of the position of law as was applicable in the relevant AY 2017-18. It is noted that, the ascertainment of object/purpose of incentive or subsidy to determine whether it is capital or revenue in nature, is no longer relevant as the position of law is noted to have has underwent change from AY 2016-17 and onwards. It is observed that, in the Finance Act, 2015, the Legislature has amended the

definition of 'income' by inserting clause (xviii) in section 2(24), which read as under:-

> "assistance in the form of subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement (by whatever name called) by the Central Government or a State Government or any authority or body or agency in cash or kind to the assessee other than subsidy or grant or reimbursement which is taken into account for determination of actual cost of the asset in accordance with the provision of Explanation 10 to clause (1) of section 43."

6.4 It is noted that, under the above provision, subsidies, grants, cash incentives, duty drawback, waivers, concessions or reimbursements provided by the Central or State Governments either in cash or kind, will be included within the meaning of term *"income"* and consequently, will be taxable under the Act. The genesis of above amendment can be traced back to judicial precedents in which capital subsidy (the benefit of subsidy being capital in nature) was held to be non-taxable. Through above-mentioned amendment, all types of subsidy, assistance, incentive received from the Government, irrespective capital or revenue in nature, has now become taxable. Prior to the above amendment, it is observed that, the Hon'ble Supreme Court had applied the "purpose test" to determine whether a subsidy was a capital or revenue receipt. The Hon'ble Supreme Court in the case of **Sahney Steel & Press Works Ltd. vs. CIT (228 ITR 253)** held that purpose or object of subsidy was relevant to decide the character of the incentive not the mechanism of payment and observed that, *"If the object of the subsidy scheme was to*

enable the assessee to run the business more profitably then the receipt is on revenue account. On the other hand, if the object of the assistance under the subsidy scheme was to enable the assessee to set up a new unit or to expand the existing unit then the receipt of the subsidy was on capital account". Similarly, in **CIT Vs Ponni Sugars and Chemicals Limited (306 ITR 392)**, it was held that, if the subsidy's purpose was to help the assessee run the business more profitably or meet daily business expenses, it was considered a revenue receipt (and thus taxable). Conversely, if the subsidy aimed at setting up a new unit or expanding an existing unit, it was deemed a capital receipt (and not taxable). The above amendment by the Finance Act, 2015, is noted to have altered the position of law and has made all subsidies, irrespective of its object or purpose, to be taxable by way of *'income'* unless it has been received towards the actual cost of an asset. We also note that, the constitutional validity of this amendment was challenged, which is noted to have been already negated by the Hon'ble Bombay High Court in the case of **Serum Institute of India (P.) Ltd. Vs UOI (157 taxmann.com 107)**. It is seen that, Hon'ble High Court inter alia affirmed the Legislature's action of overruling judicial precedents that distinguished capital receipts from revenue receipts and subsumed both under 'income' and subjecting them to taxation.

6.5 We find that, this identical issue had come up for consideration before this Tribunal in the case of **M/s Hyundai Motor India Ltd Vs DCIT** in **IT(TP) No.56/Chny/2024** for the AY 2018-19, and the subsidies were held to be taxable, in light of the amendment to Section 2(24)(xviii) by the Finance Act, 2015, by holding as under:

> "12. Proceeding further, we find that the provisions of Sec.5 provide the scope of total income. It provides that subject to the provisions of this Act, total income of a person who is resident would include all income from whatever sources derived which is received or deemed to be received in India or income which accrue or arise or deemed to accrue or arise in India. The heads of income has been carved out in Section 14 of the Act. The provisions of Sec.14 provide for heads of income under which such income would be assessable. These provisions provide that save as otherwise provided by this Act, all income shall, for the purposes of charge of income-tax and computation of total income, be classified in five distinct heads of income i.e., Salaries, Income from House Property, Profits and Gains of business or profession, capital gains or income from other sources. In other words, once an item has been found to be covered within the meaning of 'income', the same shall have necessarily to be classified in distinct heads of income and computations of tax would be made accordingly. Since the definition of income is an inclusive one, it is not necessary as well as not practical that each item of income is clearly and distinctly spelt out in charging provisions of distinct heads of income. We also find that the provisions of Sec.28 specify the income which shall be chargeable to Income Tax under the heads 'Profits and Gains of business or Profession'. The sub-clause (i) provides that profits and gains of business or profession which was being carried on by the assessee at any time during the previous year shall be chargeable to tax under the head 'Profits and Gains of Business or Profession'. From the scheme of the Act, it could be seen that the definition of income as provided in Sec. 2(24)(xviii) is of widest amplitude and it is an inclusive definition and not an exhaustive definition. The scope of total income includes all types of income that is received or that accrues or arises to the assessee. The income has to be divided into five distinct heads one of which is 'Profits and Gains of Business or Profession'. In our considered opinion, when the definition of income is not exhaustive one, it is not necessary that to tax the income, corresponding amendment should have been made in Sec.28 of the Act.

The argument that the amendment is not a substantive amendment is not correct and we do not concur with this argument.

13. It could also be observed that even before this amendment, the subsidy was not specifically spelt out in Sec.28 yet the subsidies which were of revenue in nature were always brought to tax under the head 'Profits and Gains of Business or Profession' and capital receipts were held to be non-taxable considering the 'purpose test' as laid down by Hon'ble Supreme Court in various case laws. The revenue subsidies were so brought to tax under the head 'Profits and Gains of Business or Profession' on the reasoning that subsidies primarily arose to the assessee while conducting its business and the same was to be treated as per the provisions as applicable to computation of Income under the head 'Profits and Gains of Business or Profession'. The subsidies, in our opinion, in all such cases were covered under the provisions of Sec. 28 (i) itself i.e., the 'profits and gains of any business or profession which was carried on by the assessee at any time during the year'. This being the case, the logical conclusion that would follow would be that after amendment of the definition of 'income, there was no separate requirement of bringing corresponding amendment to Sec.28 since clause (i) was wide enough or in fact, was already governing the treatment of such subsidies. Therefore, the argument of Ld. AR that there should be corresponding amendment in the charging provisions before an item could be brought to tax is not acceptable. These arguments stand rejected.

14. Upon perusal of amendment, we find that the effect of amendment made in Sec.2(24) by Finance Act 2015 w.e.f. 01.04.2016 by way of insertion of Clause (xviii) would be that income would include any assistance in the form of a subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement (by whatever name called) by the Central Government or a State Government or any authority or body or agency in cash or kind to the assessee other than the subsidy or grant or reimbursement which is taken into account for determination of the actual cost of the asset in accordance with the provisions of Explanation 10 to clause (1) of section 43. The effect of the amendment, in our considered opinion, was that various concessions etc. provided by specified authorities either in cash or in kind by whatever name called will be included within the meaning of term 'income' and consequently, the same would be taxable under the Act. The phrase by whatever name called captures the essence of the amendment as brought out by the legislatures and the same in crystal clear terms expresses the intention of the legislatures. In our opinion, the distinction being hitherto created by judicial decisions between capital receipts and revenue receipts was done away by this amendment

and the earlier case laws holding the field would cease to apply after the amendment. The intention of legislature was to bring to tax all kinds of subsidies irrespective of their nature, manner of receipt and the agency from which it was received. The only exception provided is that in case the said concessions were taken into account to determine the actual cost of an asset in terms of Explanation 10 to clause (1) to Section 43, the same would not be separately taxable since in such a case, the quantum of depreciation would be reduced. In all the other cases, irrespective of nomenclature or the manner in which the same are given, such concessions would always form part of income of the assessee notwithstanding the 'purpose' or objective of the scheme or whether the same was in capital field or in revenue field. This amendment has, thus, taken away the distinction between capital receipts and revenue receipts or the 'purpose test' as laid down by Hon'ble Apex Court in various decisions. The amended definition provide that all sorts of assistance received by an assessee from the specified persons, irrespective of its nature as capital or revenue, shall be taxable as income of the assessee unless the same falls in the exclusion category. In such a situation, the relevant case laws as cited by Ld. AR in support of the argument that 'purpose test' must be followed are to be disregarded and it was to be held that those case laws would have no application after the aforesaid amendment. We concur with the stand of Ld. CIT-DR, in this regard.

15. In view of the foregoing, the amount of subsidies as received by the assessee has rightly been brought to tax by Ld. AO in the assessment order. Ground No.6 and all its sub-grounds as raised by the assessee, stand dismissed."

6.6 Considering the above amendment to section 2(24) of the Act and decision of this Tribunal (supra), we are of the view that the decision rendered in assessee's own case for AY 2013-14 is no longer applicable, due to change in position of law. We are therefore of the view that the lower authorities had rightly taxed the impugned subsidy as income of the assessee. Accordingly, this ground of the assessee stands dismissed.

7. Ground No. 6 raised by the assessee relates to disallowance of royalty payable to the Government on limestone excavation. According to the AO, the royalty paid to the Government on limestone excavation was subject to the rigors of Section 43B of the Act and was deductible only on actual payment basis. The AO observed that, the provisions of Sec. 43B *covers "Any sum payable by way of tax, duty, cess or fee, by whatever name called under any law for the time being in force"* and that the amount provided for in the books of account as per the demand made under the Mines and Mineral (Development Regulation) Act was subject to Section 43B of the Act. The AO noted that, the assessee had provided an amount of ₹13,25,77,002/- towards sum payable to National Mineral Fund under the Mines and Mineral (Development Regulation) Act, which remained unpaid upto the date of filing of ROI. The AO further observed that, the assessee had paid an amount of ₹98,86,737/- relating to earlier years before due date of filing the ROI. The AO is accordingly found to have made net disallowance of ₹12,26,90,265/- [13,25,77,002 - 98,86,737] u/s 43B of the Act. On appeal, though the Ld. CIT(A) in principal upheld the action of the AO, but he observed that, the assessee had furnished details/evidence showing that, a further sum of ₹8,36,64,107/- relating to amount(s) disallowed in earlier years, was paid/reversed during the year, pursuant to the Notification dt. 17th September, 2015 issued by Ministry of Mines, Government of India

reducing the quantum of royalty payable. The Ld. CIT(A) accordingly allowed further deduction of ₹8,36,64,107/- u/s 43B of the Act and thereby confirmed net disallowance of ₹3,90,26,158/- [12,26,90,265 - 8,36,64,107]. The relevant findings of the Ld. CIT(A) taken note of by us, is as under:-

> "10. Disallowance u/s 43B:
>
> 10.1. As Per the financials, the assessee has claimed an amount of Rs. 11425.73 lakhs as Royalty payment payable to the Government and the limestone excavated. It is noted that this payment includes an amount of Rs. 13,25,77,002/- as provision payable to National Mineral Fund under The Mines and Mineral (Development Regulation) Act. Out of this provision, an amount of Rs.98,86,737/- was paid before due date of filing the ROI. However, balance provision of Rs. 12,26,90,265/- were not paid to the Government. The assessee argued that disputes were going on before the legal forums on the said levy, therefore the payment was delayed till finality was reached on the amount demanded by the Government, and therefore, the provision is an allowable deduction.
>
> 10.2. Whereas, the provisions of sec 43B covers Any sum payable by way of tax, duty, cess or fee, by whatever name called under any law for the time being in force. Therefore, the amount provided for in the books of account as per the demand made under The Mines and Mineral (Development Regulation) Act is squarely covered and the same is disallowed u/s.43B.
>
> 10.3. The assessee also submitted that out of total sum of Rs. 24,47,24,383/- (Rs.4,45,52,003/- from AY 2015-16; Rs.20,01,72,380)net disallowed amount brought forward from previous asst year 2015-16/2016-17, a sum of Rs. 8,36,64,107/- was paid/reversed due to the Notification dt. 17th September, 2015 by Ministry of Mines, Government of India reducing the Royalty payable. The copy of the GO was also produced for verification. Accordingly, the disallowance for the current asst year 2017-18 is worked out as follows:
>
> Provision of Current year to be disallowed = Rs. 12,26,90,265
>
> Less: Allowance of payment wrt AY 2015-16/16-17 = Rs. 8,36,64,107
>
> Disallowance : Rs.3,90,26,158/-

7.1 Aggrieved by the above action of the Ld. CIT(A) partly confirming the disallowance made by the AO, the assessee is now in appeal before us.

7.2 Heard both the parties. Though the Ld. AR appearing for the assessee vehemently contended in support of this ground, but was neither able to controvert the above findings of the Ld. CIT(A) nor was he able to show as to why the royalty payable to government under the Mines and Mineral (Development Regulation) Act cannot be subject to the provisions of Section 43B of the Act. We thus see no reason to interfere with the impugned action of the Ld. CIT(A), which we confirm, and dismiss this ground of appeal of assessee.

8. Ground No.7 raised by the assessee is against the Ld. CIT(A)'s action of confirming the addition made by the AO on account of the provision set aside for leave encashment of ₹1514.47 Lakhs, while assessing the book profit u/s 115JB of the Act. Briefly stated the facts of the case are that the assessee had provided for the leave encashment in terms of the mandatory Accounting Standards -15 issued by the Institute of Chartered Accountants of India. It is seen that, the AO had invoked Section 43B(f) and disallowed the provision for leave encashment, both while computing income under normal provisions as well as the book profit u/s 115JB of the Act. On appeal the Ld. CIT(A) confirmed the action of the AO. Being aggrieved the assessee is now in appeal before us.

8.1 The Ld. AR argued before us that, though in view of the decision of Hon'ble Supreme Court in the case of **Exide Industries Ltd Vs CIT (425**

ITR 1) the provision for leave encashment was allowable only on payment basis u/s 43B(f), while computing income under normal provisions, but according to him, the provisions of Section 43B(f) cannot be imported while computing book profit u/s Section 115JB of the Act. He submitted that, the book profit is required to be computed in accordance with the manner laid down in Explanation (1) to Section 115JB and that no addition/deletion can be made, except as provided in the clauses contained in Explanation (1) to Section 115JB. He explained that, only provision for unascertained liabilities is required to be added back under clause (c) of the Explanation to section 115JB(2) and that the impugned provision for leave encashment being in the nature of ascertained liability, could not have been added back while computing book profit u/s 115JB of the Act. In this regard, he relied upon the following decisions:-

(i) Bharat earth movers v CIT (211 ITR 684) (SC)

(ii) CIT –vs.- HCL Comnet Systems & Services Ltd. (2008) 305 ITR 409 (SC)

(iii) CIT v. Ilpea Paramount (P.) Ltd. [2010] 192 Taxman 65 (Delhi)

(iv) CIT v. National Hydro Electric Power Corpn. Ltd. [2010] 45 DTR 117 (Punj. & Har.)

(v) Eastern Power Distribution Co. of AP Ltd Vs ACIT

(139 TTJ 94)

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

8.3 Having heard the rival submissions and after perusal of the material placed before us, we agree with the first contention of the Ld. AR that, Section 115JB being a code in itself, the provisions of Section 43B which is applicable for computing income under the head 'Profits & Gains of Business' cannot be imported into the computation mechanism set out in Explanation (1) to Section 115JB of the Act. Rather, the AO is required to ascertain whether the impugned provision can be added back or not, under any of the specified clauses set out in Explanation (1) to Section 115JB of the Act. We find that the lower authorities have not examined this aspect at all and on similar facts, this Tribunal had set aside the issue back to the file of the AO in the earlier year(s) to decide the matters afresh. Respectfully following the same, we set aside the issue back to the file of the AO and direct him to decide the allowability of the impugned provision while computing book profit u/s 115JB de novo, and in light of Explanation (1) to Section 115JB of the Act alone. Needless to say, the assessee shall be afforded opportunity to substantiate that, the provision for leave encashment was in the nature of ascertained liability or not. This ground is therefore allowed for statistical purposes.

9. Ground No.8 raised by the assessee relates to disallowance of interest paid on belated TDS, while computing book profit u/s 115JB of the Act. The AO is found to have observed that, since the assessee had added back the interest on TDS under normal computation, similar addition was to be made while computing book profit u/s 115JB of the Act. The AO accordingly added back the interest paid on TDS of Rs.5,42,483/- u/s 115JB of the Act. The action of the AO is found to have been confirmed by the Ld. CIT(A). Aggrieved, the assessee is now in appeal before us.

9.1 Heard both the parties. The Ld. AR, at the outset, pointed out that, the impugned issue stands covered in assessee's favour by the decision rendered by the coordinate Bench in their own case vide order dated 18.8.2021 (supra), and the relevant Para 23.4 is noted to read as under:

> *"23.4 We have heard both the parties, perused materials available on record. As per explanation (2), income tax shall include any interest charged under this act, and hence interest on income tax shall alone be added back and explanation 1(a) to section 115 JB of the act. Admittedly TDs is not an income tax of the assessee. It is a tax deducted at source in respect of income of a 3rd party, therefore TDs cannot be considered as income tax payable by the assessee on its income therefore any interest paid on belated remittance of TDs also in the nature of expenditure deductible under the act and hence same cannot be added back to book profits computed under section 115 JB of the Act."*

9.2 Following the above, the interest of ₹5,42,483/- paid for belated deposit of TDS is allowed as deduction while assessing book profit u/s 115JB of the Act. This ground is accordingly allowed.

10. Ground No.9 raised by the assessee is against the disallowance of deduction u/s. 80IA of the Act. The facts concerning this issue are that, the assessee owns and operates two captive power generating unit(s), a Windmill located at Kayathar and a Waste Heat Recovery Plant (WHRP) situated at Vishnupuram and the electricity generated by these units is consumed entirely by the assessee's own manufacturing units. These power generating units qualified as 'eligible unit' engaged in the business of generation of power under section 80-IA(4)(iv) of the Act. The assessee accordingly prepared stand-alone accounts of said eligible unit in terms of Section 80-IA(5)/(7) of the Act. As the power generated by these eligible units assessee was actively consumed by the manufacturing unit, such transfer of power qualified as a reportable specified domestic transaction in terms of Section 80-IA(8) read with Section 92BA of the Act. The transfer pricing auditor duly reported this intra-unit transfer in Form 3CEB filed for AY 2020-21 and the said specified domestic transaction was benchmarked following the Comparable Uncontrolled Price Method [hereinafter referred to as CUP]. While undertaking the benchmarking exercise, the non-eligible unit was taken as the 'tested party' and the transfer price of power supplied by the eligible units to the manufacturing unit was benchmarked at the annual average of the landed cost at which power was being supplied by the respective State Electricity Boards to the manufacturing unit(s). Having regard to the transfer price so determined,

the assessee computed the profits derived from the generation and supply of electricity from these units at ₹6,79,51,564/- for the Kayathar Windmill and ₹21,77,10,267/- for the Vishnupuram WHRP. During the course of assessment proceedings, the AO referred the matter of computation of arm's length price of power units transferred to manufacturing units to the TPO. The TPO in the assessment framed u/s 92CA(3) of the Act did not agree with the benchmarking exercise adopted by the Assessee. Instead, the TPO followed the same approach as followed by his predecessor in AY 2013-14, where the rate prescribed by the respective State Electricity Regulatory Commissions (SERCs) — namely, Tamil Nadu Electricity Regulatory Commission (TNERC) and Andhra Pradesh Electricity Regulatory Commission (APERC) — for the purchase of electricity by the State Electricity Boards was adopted. Accordingly, the TPO re-calculated the allowable deduction under Section 80-IA by adopting rate of ₹3.53 per unit as per power generating tariff notified by TNERC, and ₹3.44 per unit as per the Notification of APERC. By adopting these reduced transfer price(s), the TPO re-computed the profits of the respective undertakings and concluded that both units — at Vishnupuram and Kayathar — had actually incurred loss and therefore disallowed the entire deduction claimed u/s 80-IA of the Act. It is seen that, the Ld. CIT(A) had upheld the findings of the TPO and confirmed the disallowance of the deduction claimed under Section 80-IA, by holding as under:-

> "On perusal of the details submitted by the Assessee, it is noted that the Assessee owns as windmill at Kayathar and Waste Heat Recovery Plant at Vishunupuram. The profits derived from these units, being Rs.6,79,51,564/- and Rs.21,77,10,267/- respectively, were claimed to be eligible for deduction u/s.80IA. It is noted that the Assessee adopted free market rate per unit of electricity for arriving at the profits of the undertaking. The issue is elaborately discussed in the earlier assessment year viz Assessment year 2013-14. The TPO, adopted the rate prescribed by TNERC and APERC respectively and reduced the allowable deduction under Section 80IA.

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

10.2 Before us, the Ld. Counsel for the assessee, contended that the issue stands squarely covered by the decision of this Tribunal in the assessee's own case for AY 2018-19 by this Tribunal in IT(TP)A No. 66/Chny/2022, vide order dated 31.05.2023. On perusal of this order of the Tribunal, which is placed at Pages 17–20 of the paper book, we notice that, similar type of downward TP adjustment was made for Assessment Year 2018-19 for the transfer value of power by the CPP to the manufacturing unit of the assessing. This Tribunal in IT(TP)A No. 66/Chny/2022, vide order dated 31.05.2023, after considering the arguments of both the sides and following the settled judicial precedents, decided in favour of assessee observing as follows:-

> "7. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. We find that an identical issue has been considered by the Tribunal in assessee's own case for assessment year 2013-14 in ITA No. 737/Chny/2018, where the Tribunal under identical set of facts and also by following certain judicial precedents, including the decision of Hon'ble High Court of Bombay in

the case of CIT vs Reliance Industries Ltd (Supra) held that while computing deduction u/s. 80IA of the Act for power generation companies for captive consumption, the rate charged by electricity distribution companies to its consumers should be considered instead of rate at which the power generating companies supply power to the electricity distribution companies. The relevant findings are as under:

"18.5 We have heard both the parties, perused materials available on record and gone through orders of the authorities below. We find that an identical issue has been considered by the Tribunal in assessee's own case for assessment year 2011-12 in ITA No.2412/Chny/2019 dated 12.12.2019, where the Tribunal under identical set of facts by following certain judicial precedents including the decision of Hon'ble Bombay High Court in the case of Reliance Industries Ltd., and the decision of Hon'ble Chhattisgarh High Court in the case of M/s.Godavari Power and Ispat Ltd., supra held that while computing deduction u/s.80IA for generation of power for captive consumption, the rate at which electricity board supply power to its consumers should be considered instead of the rate at which the power generating companies supply its power to the electricity board. The relevant findings of the Tribunal are as under:-

"31. We have considered the rival submission and perused the materials available on record.

32. A perusal of the facts in the present case clearly shows that the assessee has been captively consuming the electricity generated from its wind mill as also the Heat Waste Recovery Treatment Plant. Admittedly, the assessee is entitled to the deduction u/s.80IA of the Act in respect of the electricity generated and consumed. This is not in dispute. The dispute has risen for computing the deduction u/s.80IA of the Act. The issue admittedly is covered by the decision of the Co-ordinate Bench of this Tribunal in the case of Sri Velayudhaswamy Spinning Mills Vs Deputy Commissioner of Income Tax referred to supra and as also the decision in the case of Eveready Spinning Mills vs. Assistant Commissioner of Income Tax referred to supra. A similar view has also been taken in the case of M/s. Saranya Textiles vs. The Assistant Commissioner of Income Tax, wherein one of us is a party. This view of ours is also supported by the decision of the Hon'ble Gujarat High Court in the case of Commissioner of Income Tax vs. Gujarat Alkalies Chemicals Limited reported in 395 ITR 247(Guj.), wherein it has been held that the deduction u/s.80IA was allowable to the for generation of power for captive consumption and that the rate of power generation at which the

electricity board supplied power to its consumers rather than the rate at which the power generating companies supply its power to the electricity board was to be taken as the price. Further, this view has been supported by the decision of the Hon'ble Bombay High Court in the case of Commissioner of Income Tax vs. Reliance Industries Limited and as also the decision of the Hon'ble Chhattisgarh High Court in the case of Godavari power and Ispat Limited reported in [2014] 42 Taxman.com 551 (Chhattisgarh). As it is noticed that the learned CIT(A) has followed judicial discipline by following the decision of this Tribunal in the case of Sri Velayudhaswamy Spinning Mills Vs Deputy Commissioner of Income Tax and Eveready Spinning Mills vs. Assistant Commissioner of Income Tax referred to supra, as it is noticed this view has also been approved by the Hon'ble High Courts referred to supra, we find no error in the order of the learned CIT(A) which calls for any interference. It may be mentioned here that the deduction u/s.80IA is the deduction from the total income of the assessee the profits and gains of an eligible undertakings. The Hon'ble Gujarat High Court has categorically admitted that the deduction u/s.80IA is permissible for captive consumption and even the rate at which the deduction is to be computed. Consequently, the issue is held in favour of the assessee and against the Revenue."

18.6 In the present case, the facts are identical with that of the facts considered by the Tribunal in earlier year. The CIT(A) after considering relevant facts and also by following the decision of the ITAT, Chennai in the case of Eveready Spinning Mills (P) Ltd., vs. ACIT, (2012) 17 taxmann.com 254 and the decision in the case of Shri Velayudhaswamy Spinning Mills (P) Ltd., vs. DCIT, (2012) 19 taxmann.com 28 has deleted additions made by the AO by holding that market value of the power captively consumed should be computed considering the rate of power to a consumer in the open market and it should not be compared with the rate of power at which power could have been sold to SEBs because this is not the rate for which a consumer could have purchased power in the open market. Therefore, we are of the considered view that there is no error in the finding recorded by the ld.CIT(A) to delete additions made by the AO towards TP adjustment on deduction claimed u/s.80IA of the Act. Hence, we reject the ground taken by the Revenue."

8. In this view of the matter and consistent with view taken by the coordinate bench, we are of the considered view that the DRP has completely erred in sustaining the additions made by the Assessing

> Officer towards downward adjustment to the transactions of inter unit transfer of power from captive power generating unit to the assessee company. Thus, we direct the Assessing Officer to delete additions made towards TP adjustment in respect of deduction claimed u/s. 80IA of the Act."

10.3 We find that the decision of the Tribunal in the assessee's own case for the assessment year 2018-19 is squarely applicable to the present case on hand. We, therefore, respectfully following the decision of the Tribunal in the assessee's own case for the assessment year 2018-19, set aside the order of the lower authority, uphold the benchmark analysis undertaken by the assessee and delete the downward transfer pricing adjustment and allow this ground raised by the assessee.

11. Ground No.10 raised by the assessee is against the addition made by the AO u/s 68 of the Act, in respect of deposit of Specified Bank Notes [in short 'SBNs'] to the extent of ₹41,06,000/- during the period of November-December 2016. The facts relating to this issue are that, the during the Demonetization period, the assessee had deposited an amount of ₹76,21,000/- by way of SBNs and the assessee claimed that an amount of ₹41,06,000/- was collected as non-permitted cash receipts. The AO treated the impugned sum as unexplained cash credit and added it to the income of the assessee u/s 68 of the Act. On appeal, the CIT (A) confirmed the addition of ₹41,06,000/-holding as under:

"Hence, I am constrained to conclude that the above cash deposits were held by the Assessee as on 08.11.2016 outside the books of account. After demonetisation announcement, the Assessee brought in the same in the books of account claiming as cash received from the borrower cash collection. Accordingly the cash deposits of Rs.41,06,000/- which was collected as non-permitted receipts is treated as unexplained cash credit and added as income of the Assessee under Section 68. It is tobe noted that the unexplained cash credit of Rs.41,06,000/- is taxed @ 60% without set off of any loss or deduction as per provisions of Section 115BBE of the Act. The assessment of Rs.41,06,000/- is confirmed.

11.1 Heard both the parties. The assessee is found to have explained before the lower authorities, that the impugned amount represented repayment of loans (advances) by employees who were travelling across various locations on the date of notification of demonetization, who had returned the advances inter alia comprising of SBNs later on. The Ld. AR submitted that, for a company of the size of the assessee, with a turnover of ₹5794 Crores and sales spread all across India, the amount of advances returned by the employees cannot be considered as unreasonably high. The Ld. AR argued that, if the employees chose to return the advances, wherein some SBN notes are involved, the Company cannot be considered as responsible or trying to spin off SBNs obtained illegally. The assessee explained that, the owners of such advances were employees but not the assessee and as the source has been explained, which is in the course of normal business, the same cannot be added u/s 68 r/w Sec. 115BBE of the Act. .

11.2 We have heard both the parties and perused the material placed before us. We find that the assessee is not disputing the fact that, they were in receipt of non-permitted cash receipts subsequent to demonetization. Rather, it is the assessee's plea that, since the source of such receipt has been explained, the same cannot be added back u/s 68 of the Act. Before adjudicating the issue as to whether deposit of non-permitted cash receipts can be viewed adversely for income-tax purposes or not, according to us, the assessee is first required to establish the source of such receipts and whether the same is sufficiently explained or not, in terms of Section 68 of the Act. The assessee has claimed that, the impugned amount represented advances which were returned by travelling employees. We however find that no details/evidence has been furnished to substantiate the same. In order to justify their claim, the assessee ought to provide the names, details of the employees, the dates on which advances were given to them, evidence that they were travelling on the date of demonetization, confirmation of accounts from them etc. We however find that, no such details were either furnished before the lower authorities or before us. Hence, in fitness of the matters, we consider it fit to remit the matter back to the AO with direction to the assessee to submit necessary details/evidences to substantiate the source of these non-permitted cash receipts. The details/evidences mentioned in the foregoing are only illustrative and the assessee is free to produce any

other details, as it considers fit. The AO may also make independent enquiries from the employee(s), if so desired. This ground is accordingly allowed for statistical purposes.

12. In the result, appeal filed by the assessee is partly allowed.

Order pronounced on the 02nd day of January, 2026, in Chennai.

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

चेन्नई/Chennai,
दिनांक/Dated: 02nd January, 2026.
TLN

आदेश की प्रतिलिपि ग्रेषित**/Copy to:**

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