आयकर अपीलीय अधिकरण, हैदराबाद पीठ

IN THE INCOME TAX APPELLATE TRIBUNAL

Hyderabad 'B' Bench, Hyderabad

Before Shri Manjunatha G., Accountant Member

and

Shri Ravish Sood, Judicial Member

(Hybrid Hearing)

आयकरअपीलसं./**I.T.A. No.1083/Hyd/2024**

(निर्धारणवर्ष/ **Assessment Year:2017-18)**

Assistant Commissioner of Income Tax, Circle-5(1), Hyderabad.	*VS.*	Penna Cement Industries Limited, Hyderabad. PAN: AABCP2290D
(अपीलार्थी/ Appellant)		**(प्रत्यर्थी/ Respondent)**

आयकरअपीलसं./**I.T.A. No.1084/Hyd/2024**

(निर्धारणवर्ष/ **Assessment Year:2018-19)**

Assistant Commissioner of Income Tax, Circle-5(1), Hydeabad.	*VS.*	Penna Cement Industries Limited, Hyderabad. PAN: AABCP2290D
(अपीलार्थी/ Appellant)		**(प्रत्यर्थी/ Respondent)**

करदाताकाप्रतिनिधित्व/ Assessee Represented by	:	Shri Sourabh Soparkar, Advocate
राजस्वकाप्रतिनिधित्व/ Department Represented by	:	Dr. Narendra Kumar Naik, CIT-DR
सुनवाईसमाप्तहोनेकीतिथि/ Date of Conclusion of Hearing	:	11/11/2025
घोषणा की तारीख/ Date of Pronouncement	:	21/01/2026

ORDER

PER RAVISH SOOD, JM:

The present appeals filed by the revenue are directed against the orders passed by the CIT(Appeals), dated 22.08.2024, which in turn arises from the respective orders passed by the Assessing Officer (for short, "AO") under section 143(3) r.w section 144B of the Income-tax Act, 1961(for short, "Act"), dated 26.09.2021 and 03/09/2021, for the AY 2017-18 and AY 2018-19, respectively. As certain common issues are involved in the captioned appeals, therefore, the same are being taken up and disposed of vide a consolidated order. We shall first take up the appeal filed by the revenue in ITA 1083/Hyd/2024 for AY 2017-18, and the order therein passed on the common issues shall apply mutatis mutandis to the other appeal. The revenue has assailed the impugned order of the CIT(Appeals) on the following grounds of appeal before us:

> "1. The Learned CIT(A) erred in deleting the addition of Rs.74.92 lakhs made by the AO u/s14A when the AO can make disallowance based on the facts and which is permissible as per CBDT Circular No.5/2024 dt.11.02.2014.
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> 2. The CIT(A) erred in appreciating that in the assessee's own case for the AY 2013-14 & 2014-15, appeals filed by the revenue on the same issue before the Hon'ble High Court vide ITTA Nos.178/2019 & 179/2019 are pending adjudication.

3. The CIT(A) erred in deleting the addition u/s 80G of Rs.1.88 crores made by the AO and in appreciating that the CSR expenditure is "mandatory" but donations u/s 80G are voluntary in nature.

4. The CIT(A) erred in appreciating that the assessee has violated the provisions of Rule18BBB of I.T. Rules, 1962 vis-a-vis provisions of section 80IA of the Act.

5. The CIT(A) erred in appreciating that the transactions made by the assessee with M/s Lakshin Infradev Pvt Ltd are bogus in view of post inquiry results of the investigation conducted by the Department.

6. Any other ground(s) that may be urged at the time of appeal hearing."

2. Succinctly stated, the assessee is a company engaged in the business of manufacturing and sale of cement along with captive generation of power. The assessee company had e-filed its return of income for AY 2017-18 on 29.11.2017, declaring an income of Rs. 228,62,62,070/-. Subsequently, the case of the assessee company was selected for complete scrutiny under the E-assessment Scheme, 2019, for verifying multi-facet issues, viz. (i). disallowance under section 14A of the Act; (ii). allowability of the assessee's claim for deduction under section 80G in respect of CSR donations; (iii). eligibility of the assessee's claim for deduction under section 80-IA of the Act w.r.t its power generation units; and (iv). addition under section 68 in respect of transactions with M/s. Lakshin Infradev Pvt. Ltd.

3. During the course of assessment proceedings, a reference under section 92CA(1) was made by the AO to the Transfer Pricing Officer

(TPO) in respect of specified domestic transactions reported by the assessee company. The TPO, after examining the submissions and documentation furnished by the assessee company, passed an order under section 92CA(3) of the Act, determining the arm's length price (ALP) of the specified domestic transactions and did not propose any adjustment.

4. Thereafter, the AO, after making certain additions/disallowances, viz. (i) disallowance under section 14A r.w rule 8D: Rs. 74,92,000/-; (ii) disallowance of the claim of the assessee company for deduction under section 80G w.r.t CSR donations: Rs. 1,88,97,644/-; (iii) disallowance of the claim of deduction of the assessee company under Section 80IA of the Act: Rs. 24,35,05,411/-; and (iv) addition under section 68 in respect of alleged bogus transactions with M/s. Lakshin Infradev Pvt. Ltd: Rs. 1,29,91,000/-, determined he income of the assessee company vide his order passed under section 143(3) r.w.s 144B of the Act, dated 26/09/2021 at Rs. 256,91,48,125/-.

5. Aggrieved, the assessee company carried the matter in appeal before the CIT(Appeals). During the course of appellate proceedings, the assessee company filed additional evidence, which was forwarded by the CIT(A) to the AO for verification. In reply, the AO filed a "remand report" dated 09.01.2024. Thereafter, the assessee company filed a rejoinder dated 08.08.2024. The CIT(A), after considering the material

on record, deleted all the additions made by the AO. For the sake of clarity, we deem it apposite to cull out the observations of the CIT(A) as under:

> "3. Grounds No.1 and 6 are general in nature and hence there is no need of separate adjudication. Ground No.2 is raised against the addition amounting to Rs.74,92,000 made u/s 14A r.w.rule 8D. During assessment proceedings assessee was asked to furnish monthly averages of the opening and closing balances of the value of investment. Details of investments are as follows;

(Amount in Crores)

Name of the Company	Investments as on 31.03.2017	Investments as on 31.03.2016	Remarks
Andhra Pradesh Gas Power Corporation Ltd	1.70	1.70	Note 1
Pioneer Cement Industries Ltd	58.32	58.32	Note 2
Parasakti Cement Industries Ltd	16.60	16.60	Note 3
Total Investments	**74.92**	**74.92**	

> The company replied that investments in equity shares of various companies in earlier years were out of interest free funds in the form of capital and free reserves and the company had not incurred any expenses with respect to the investments made. Further, during the Financial Year 2016-17 the company has not earned any exempt income from the above investments and as such the provisions of section 14A shall not be applicable to the company. Assessing Officer held that, incurring no expenditure, as stated by the assessee above, in managing investments of such huge amounts of requiring not only manpower, but also expertise in the field, decision making and technical expertise as well, fails the test of human probability. Further, as per Section 14A(3), it is also applicable even if no expenditure has been incurred by the assessee. On the issue of whether in the absence of exempt income earned/claimed during the concerned year, disallowance could be made under section 14A, the departmental SLP against the order of High Court in IL&FS Energy Development Company Ltd. [2017] 84 taxmann.com 186 (Delhi) was still pending before the Supreme Court. In view of the above, an amount of Rs.74,92,000/- was added to the total income of the assessee.
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> 3.1 According to the newly inserted explanation to section 14A, notwithstanding anything to the contrary contained in the act, the provisions of section 14A shall apply and shall be deemed to have always applied in a case where the income not forming part of the total income has not accrued or arisen or has not been received during the year and the expenditure has been incurred during the year in relation to such income. In the case of NCC Infrastructure Holdings

Limited (ITA No. 144/Hyd/2023), the jurisdictional Hyderabad ITAT held that, the amendment of section 14A of the Act which is 'for removal of doubt' cannot be presumed to be retrospective even where such language is used, if it alters or changes law as it earlier stood and concluded that no disallowance under section 14A of the Act can be made if the assessee had not earned any exempt income during the year under consideration. The tribunal relied on the Delhi High Court cases of Era Infrastructure (India) Ltd., (2022) 141 taxmann.com 289 and IL&FS Energy Development Co. Ltd, (2017) 84 taxmann.com 186 and also the memorandum of Finance Bill, 2022 accordingly to clauses 5 to 7 thereof.

3.2 In the instant case the appellant had invested in subsidiary cement companies as part of expansion of business which are strategic investments and not for the purpose of earning exempt income. As on 31.03.2017 Investment in Pioneer Cement Industries Ltd was Rs.58.32 crores. Pioneer was incorporated in the Financial Year 2010-11 with the objective of setting-up cement manufacturing plant in the state of Rajasthan and the cement plant is under construction. Further, pioneer is a wholly owned subsidiary of the assessee company and pioneer is still under work-in-progress. Parasakti Cement Industries Ltd in which the appellant company invested Rs.16.50 crores is also engaged in the business of manufacturing and sale of cement. Parasakti is an associate enterprise of the company. These investments were made out of own funds and the company has not earned any exempt income during the Financial Year 2016-17. Investment in Andhra Pradesh Gas Power Corporation Ltd was only Rs.1.70 crores. APGPCL is a government company and the investment was made to ensure supply of power to the cement plants of the company and not for earning any income. Moreover, APGPCL operates on "No Profit and No Loss" basis and do not issue any dividend. In the case of HOLCIM INDIA P. LTD (ITA No. 486/2014 & ITA No. 299/2014), High Court of Delhi deleted the disallowance u/s 14A stating that the respondent-assessee, therefore, had to incur expenditure for the business in the form of investment in shares of cement companies and to further expand and consolidate their business. Expenditure had to be also incurred to protect the investment made. The genuineness of the said expenditure was not doubted by the Assessing Officer. Appellant invested its own fund from reserves and surplus in subsidiary cement companies for expansion of business. The company has not received any income or dividends from these investments. Accordingly, there is no question of disallowance of expenses against exempt income. As a result, ground no 2 is allowed.

4. Ground No.3 is raised against disallowance of 80G deduction amounting to Rs.1,88,97,644 claimed against CSR expenditure. The company extended following donations out of the CSR expenses;

Details of Donations made during the FY 2016-17

Name of the Party	Amount in (Rs)
Pioneer Education Trust	2,88,45,288
Sri Sringeri Peetham Charitable Trust	50,00,000
Utkarsh Star Mitra Mandal	1,00,000
Sahrudaya Health	10,00,000
Hyderabad Round Table No.8 Charitable Trust	6,00,000
Maha Bodhi Society	22,50,000
Total Donations	**3,77,95,288**
Deduction eligible U/s 80G	**1,88,97,644**

The assessing officer held that such a deduction is not allowable as CSR expenditure by the assessee forms a part of the mandatory requirement of the Companies Act, 2013 and consequently not eligible for deduction under section 80G of the Income-tax Act, 1961. That the intent of the legislature is to restrict deduction(if not specifically provided like in case of PM CARES fund) under section 80G, even if the contribution qualifies as CSR expenditure under the CA 2013. Hence deduction of Rs.1,88,97,644 claimed u/s 80G was disallowed.

4.1 Regarding the issue of claiming 80G deduction against CSR expenditure, the jurisdictional Hyderabad ITAT has held in the case of Optum Global Solutions (India) Private Limited (ITA-TP Nos. 145 & 482/Hyd/2022) that, coming to the Income Tax Act, 1961, there is no express provision to support the contention of Revenue. On the other hand, section 80G(2)(iiihk) and (iiihl) of the Act expressly provide that such sums donated for Swatch Bharath Kosh and Clean Ganga Fund shall be the amounts other than the sums spent by the assessee in pursuance of CSR, meaning thereby the donations made towards Swatch Bharath Kosh and Clean Ganga Fund spent as a part of CSR are not qualified for deduction under section 80G of the Act. Out of so many entries under section 80G(2) of the Act, only donations in respect of two entries are restricted if such payments were towards the discharge of the CSR. The Legislature could have put a similar embargo in respect of the other entries also, but such a restriction is conspicuously absent for other entries. The irresistible conclusion that would flow from it is that it is not the legislative intention to bar the payments covered by section 80G(2) of the Act which were made pursuant to the CSR, and other than covered by section 80G(2)(iiihk) and (iiihl) of the Act. As stated above, clue can be had from the restrictions by way of section 80G(2)(iiihk) and (iiihl) of the Act. (para 16) We are in agreement with such observations and findings of the Coordinate Bench of the Tribunal and while respectfully following the same, we hold that inasmuch as the assessee satisfied the conditions of section 80G of the Act, the assessee is entitled to claim deduction under section 80G of the Act in respect of such donations which formed part of the spend towards CSR. Respectfully following the jurisdictional tribunal, ground no 3 is allowed.

5. Ground No.4 was raised against the disallowance of deduction u/s 80IA amounting to Rs.24,35,05,411/-. The company is engaged in the business of manufacturing of cement and generation of power. Power generated is being used for manufacturing cement and the profits

earned from Power Divisions are claimed as deduction U/s 80IA of the Income Tax Act, 1961. The company has power generation units established in earlier financial years and claimed deduction U/s 80IA on the profits earned from the power generation units. Details of Power generation units are as follows;

Particulars	Amount in Rs.	Remarks
Ganeshpahad Power Division	14,99,27,438	*Commencement of business- AY 2009-10. Initial year of deduction AY 2013-14.*
Ganeshpahad Waste Heat Recovery Plant (WHR)	3,69,04,852	*Commencement of business- AY 2015-16. Initial year of deduction AY 2017-18*
Boyareddypalli Waste Heat Recovery Plant (WHR)	5,66,73,121	*Commencement of business- AY 2015-16. Initial year of deduction AY 2017-18*

The assessing officer held that the assessee did not furnish any sanction or approval from the statutory authority which constitute an integral part of the Form-10CCB. On requisitions assessee furnished document from Pollution Control Board which is not permission or sanction letter for running eligible business. The AO further stated that the assessee failed to maintain separate accounts for Power Division and Cement Division as per the records and the omission to do so resulted not only in reduction of taxable income of the non eligible units but also inflated profits to the eligible units. In the remand report dated 09.01.2024, the AO stated that even though the assessee has now submitted the signed financials of Thermal Power Division and WHR Power Divisions as additional evidence, it is seen from the computation of total income of the assessee, that the assessee has balance of income after setting of all its income from eligible income u/s. 80IA.

5.1 The power units started claiming deduction U/s 80IA from the year of profit generation and the same is permissible u/s 80IA. The major concern raised by the AO in the remand report is that the assessee company has not submitted approval / permission / agreement with State / Central Government / Local Authority in accordance with Sub-rule 4 of Rule 18BBB of the Income Tax Rules. Sub-Rule 4 of Rule 18BBB states that “In any other case, the form shall be accompanied by a copy of the agreement, approval or permission, as the case may be, to carry on the activity signed or issued by the Central Government or the State Government or the local authority for carrying on the eligible business”. During the assessment and appeal proceedings, appellant has submitted Consent of Operations, permission for setting-up power plants from Ministry of Commerce and Industry, agreement with Telangana State Power Co-ordinate Committee i.e., approvals, permission, agreement from Central Government as well as state government, which fulfills the conditions specified under Sub-rule 4 of the Rule 18BBB. As a result, ground no 4 is allowed.

6. Ground No.5 was raised against the addition of Rs.1,29,91,000 shown as sales receipts from M/s Lakshin Infradev Pvt. Ltd., under section 68 of the Act. An inquiry report was received from the Income Tax Investigation – Unit New Delhi that M/s Lakshin Infradev Private Limited existed only as a paper entity and was involved in raising bogus invoices to route funds. The name of the assessee appeared in the list of entities having transacted with M/s Lakshin Infradev Private Limited. Appellant stated that the company have made cement sales to the tune of Rs.1,50,46,520/- to M/s Lakshin Infradev Pvt Ltd and received sale consideration of Rs.1,27,54,960/- and the closing balance as on March 31, 2017 was Rs.22,91,560/-, which was subsequently received in AY 2018-19. These sales are included in the total turnover of the company for the Financial Year 2016-17. Appellant submitted bank statements, ledger extracts and invoices. The assessing officer held that the information received via inquiry report already states that the entity M/s Lakshin Infradev Pvt Ltd is a paper entity involved in raising bogus invoices to route funds, the authenticity of sales of cement as stated by the assessee is in question and hence, the explanation is not satisfactory. Hence, an amount of Rs.1,29,91,000/- was added u/s 68.

6.1 The appellant submitted all documentary evidences to prove that sales receipts from M/s Lakshin Infradev Pvt Ltd was genuine. Appellant relied on the Judgement of Hon'ble Apex Court in the case of CIT Vs Odeon Builders Pvt. Ltd. [2019] 110 Taxmann.com 64 (SC), where it is enunciated that, "the entire disallowance in this case is based on third party information gathered by the Investigation Wing of the Department, which have not been independently subjected to further verification by the AO who has not provided the copy of such statements to the appellant, thus denying opportunity of cross examination to the appellant, who has prima facie discharged the initial burden of substantiating the purchases through various documentation including purchase bills, transportation bills, confirmed copy of accounts and the fact of payment through cheques, & VAT Registration of the sellers & their Income Tax Return". From the documentary evidences in the form of sale invoices, sales register, ledger extracts and bank statements submitted during the assessment and appeal proceedings it is apparent that sales receipts from M/s Lakshin Infradev Pvt Ltd is already accounted in the total turnover adopted for tax computation. Adding these sales again as unexplained income is tantamount to double taxation. Supreme court has held in the case of Laxmichand Baijnath v. CIT; 35 ITR 416, that amount credited in business books can normally be presumed as business receipts. In this case, receipts from Lakshin Infradev were recorded in the books of the appellant. Receipts recorded in the books of accounts were already part of the income which was already credited in P&L account and the records show that goods were sold to Lakshin Infradev from whom the disputed amount was received. Once the sources are reflected in the books there is no question of unexplained credit as envisaged in section 68 of the Act. As a result ground no 5 is allowed.

7. In result, the appeal is allowed."

6. The revenue aggrieved with the CIT(A) order has carried the matter in appeal before us.

7. We have heard the Ld. Authorised Representatives of both parties, perused the orders of the authorities below and the material available on record, as well as considered the judicial pronouncements as had been pressed into service by the Ld. Authorised Representatives of both parties to drive home their respective contentions.

8. Shri. Narendra Naik, Ld. CIT-DR at the threshold of hearing of the appeal, submitted that notwithstanding the fact that the assessee company during the subject year had not received any exempt income, the disallowance under Section 14A of the Act was called for in its case. The Ld. CIT-DR to support his contention has relied upon the judgment of the Hon'ble High Court of Karnataka in CIT, Bangalore Vs. Kingfisher Finvest India Ltd. (2020) 121 taxmann.com 233 (Karnataka). Also, the Ld. CIT-DR had pressed into service the CBDT Circular No. 5/2014 dated 11.02.2014 and submitted that the principle of apportionment should be applied for disallowing the expenses incurred for earning of exempt income.

9. Per Contra, Shri. Sourabh Soparkar, Ld. Sr. Advocate (for short, "AR"), submitted that as the assessee company had during the subject year not received any exempt income, therefore, no disallowance under

section 14A was called for in its case. The Ld. AR to buttress his contention had relied on the judgment of the Hon'ble High Court of Delhi in Pr. CIT (Central) Vs. Era Infrastructure (India) Ltd. (2022) 141 taxmann.com 289 (Delhi).

10. Apropos the disallowance made under section 14A r.w rule 8D of Rs. 74,92,000/-, we find that it is an admitted position on record that during the relevant assessment year, the assessee company had not earned any exempt income. Apart from that, the assessee company had also demonstrated before the authorities below that the investments in the exempt income yielding shares in the subsidiary and associate companies for the purpose of expansion of its cement business were made in the preceding years out of its own interest-free funds. The AO had invoked section 14A on the premise that, in all probability, some expenditure must have been incurred in relation to exempt income yielding investments, and had also relied upon CBDT Circular No. 5/2014 dated 11.02.2014.

11. We have given thoughtful consideration to the subject issue, and concur with the Ld. AR that it is now well settled by a catena of judicial pronouncements, that as per law, as was available on the statute during the year under consideration, no disallowance under section 14A could be made if no exempt income was received by the assessee. In fact, we find that the CIT(Appeals) has relied on the decision of the ITAT,

Hyderabad in NCC Infrastructure Holdings Limited Vs. ACIT, Circle 16(1), Hyderabad, ITA No. 144/Hyd/2023, dated 12/06/2023, which in turn had followed the judgments of the **Hon'ble High Court of Delhi** in **PCIT Vs. Era Infrastructure (India) Ltd. (2022) 141 taxmann.com 289 (Delhi)** and **PCIT Vs. IL&FS Energy Development Co. Ltd. (2017) 84 taxmann.com 186 (Del)**, holding that the amendment to section 14A introduced by the Finance Act, 2022, is prospective and cannot be applied to the earlier assessment years.

12. We find substance in the Ld. AR's claim that as the assessee company had during the subject year not received any exempt income, therefore, as per the pre-amended Section 14A of the Act, as was available on the statute before its amendment vide the Finance Act, 2022 w.e.f 01.04.2022, in the absence of receipt of any exempt income no disallowance u/s 14A of the Act could have been made in the hands of the assessee company. Our aforesaid view is fortified by the judgment of the **Hon'ble High Court of Madras** in the case of **Commissioner of Income Tax Vs. Chettinad Logistics Pvt. Ltd. (2017) 248 Taxman 55 (Mad.).** The Special Leave Petition (SLP) (Civil) No.16194 of 2018 filed by the department before the Hon'ble Apex Court against the aforesaid order of the Hon'ble High Court of Madras in the case of Chettinad Logistics Pvt. Ltd. (supra) has been dismissed by the **Hon'ble Apex Court** in **CIT Vs. Chettinad Logistics (P) Ltd.**

(2018) 95 taxmann.com 250 (SC). Further, we find that even the review petition filed by the revenue has also been dismissed by the **Hon'ble Apex Court** vide its order passed in **Commissioner of Income Tax (Central) Vs. M/s. Chettinad Logistics Pvt. Ltd. (2019) 105 CCH 226 (SC).** Also, we find that the Hon'ble Apex Court has taken the same view in the case of **Principal Commissioner of Income Tax Vs. Oil Industry Development Board (2019) 262 Taxman 102 (SC)**, wherein the "Special Leave Petition" (SLP) against the order of the Hon'ble High Court of Delhi in the case of Principal Commissioner of Income Tax Vs. Oil Industries Development Board (2018) 101 CCH 452 (Del), holding that in the absence of any exempt income, disallowance under section 14A of any amount was not permissible, was dismissed. We, thus, respectfully follow the aforesaid settled position of law, and find no infirmity in the order of the CIT(Appeals), who had rightly observed that in the absence of any exempt income received by the assessee company during the year under consideration, no disallowance could have been made by the AO under section 14A of the Act. Also, we find no substance in the claim of the revenue that, as on the same issue, the appeals filed by the revenue against the orders of the Tribunal in the assessee's own case for AY 2013-14 & AY 2014-15 are pending adjudication before the Hon'ble High Court in ITTA Nos. 178/2019 & 179/2019, therefore, the CIT(A) had erred in vacating the impugned disallowance made by the AO under Section 14A of the Act.

We say so, for the reason that as the respective orders of the Tribunal vacating the disallowance made by the AO under Section 14A in the absence of any exempt income in the assessee's own case for the AY 2013-14 & AY 2014-15 had not been set aside or stayed by the Hon'ble High Court, therefore, the same holds the ground. Our aforesaid view that a mere filing of an appeal by the revenue before the Hon'ble High Court will not render the order of the Tribunal as inoperative is supported by the judgment of the **Hon'ble Supreme Court** in the case of **Union of India and Others Vs. Kamlakshmi Finance Corporation Limited AIR 1992 SC 711**. The Hon'ble Apex Court in its order had, inter alia, held that the officers must obey higher rulings unless stayed by a court. It was further observed that filing of an appeal by the department is not a justification for non-compliance.

13. Before parting on the aforesaid issue, we may observe, that though the legislature vide its amendment made available on the statute by the Finance Act, 2022 has inserted an "Explanation" to Section 14A of the Act, as per which, notwithstanding anything to the contrary contained in the Act, the provisions of Section 14A shall apply in a case where the income, not forming part of the total income under the Act, has not accrued or arisen or has not been received during the subject year and the expenditure has been incurred during the said previous year in relation to such exempt income, but the same is effective from

April 1, 2022 and cannot be presumed to have retrospective effect. Our aforesaid view is fortified by the judgment of the **Hon'ble High Court of Delhi** in the case of **Pr. CIT Vs. Era Infrastructure (India) Ltd. (2022) 114 CCH 219 (Delhi)** and that of the **Hon'ble High Court of Madhya Pradesh** in **Pr. CIT Vs. Keti Constructions (2024) 162 taxmann.com278 (MP),** wherein it has been held that the amendment made available on the statute vide the Finance Act, 2022, in Section 14A is effective from 01.04.2022 and cannot be permitted with retrospective effect. We, thus, finding no infirmity in the view taken by the CIT(A), who, in the absence of any exempt income received by the assessee company during the subject year, had rightly vacated the disallowance of Rs. 74.92 lacs made by the AO under Section 14A of the Act, uphold the same. The **Grounds of appeal Nos. 1 & 2** raised by the revenue are dismissed.

14. We shall now take by the grievance of the revenue that the CIT(A) has erred in law and facts of the case in vacating the disallowance of the claim of the assesseee company for deduction under section 80G of the Act of Rs. 1,88,97,644/- in respect of donations made as part of CSR expenditure.

15. The Ld. CIT-DR submitted that the AO had disallowed the aforesaid claim of the assessee company on the ground that CSR expenditure is mandatory in nature and allowing deduction of the same

under section 80G would result in indirect subsidisation by the Government. The Ld. CIT-DR submitted that section 37(1) of the Act provided that, deduction for any expenditure shall be allowed if the same is incurred wholly and exclusively for the purposes of carrying on business or profession. It was submitted by him that as the CSR expenditure (being an application of income) is not incurred for the purposes of carrying on business, such expenditure cannot be allowed as a deduction under the provisions of Section 37 of the Act. The Ld. CIT-DR had further drawn our attention to the observations of the AO recorded in the assessment order. It was submitted by him that, as observed by the AO by referring to the intention of the legislature as could be gathered from the “memorandum” to the Finance Act, 2014, the CSR expenditure, being an application of income, could not be allowed as a deduction for computing the taxable income of the assessee company. Elaborating further on his contention, the Ld. CIT-DR submitted that the CSR expenditure is not voluntary, but mandatory in nature. The Ld. CIT-DR submitted that in case CSR expenditure, which, as per the Companies Act, 2013, is mandatory and not voluntary, is allowed as a deduction under section 80G of the Act, then the same will contradict the very nature of the said expenditure. Coming to the claim of the assessee company for deduction of CSR expenditure under Section 80G of the Act, the Ld. CIT-DR submitted that, as there was no specific exemption provided for the type of donations made by the

assessee company in respect of its CSR expenses, therefore, its claim for deduction under section 80G had rightly been disallowed by the AO. The Ld. CIT-DR to support his contention, had relied upon the order of ITAT, Delhi, Bench "I" in Agilent Technologies (International) P. Ltd. Vs. ACIT/NFAC, Delhi (2024) 205 ITD 551 (Delhi).

16. Per Contra, the Ld. AR submitted that there was no blanket prohibition under the Act for claiming deduction under section 80G of the CSR related donations, and the said prohibition was restricted only to the extent of the sums paid by the assessee company as donations towards "Swach Bharat Kosh" and "Clean Ganga Fund" set up by the Central Government in pursuance of Corporate Social Responsibility (CSR) under sub-section (5) of section 135 of the Companies Act, 2013 (18 of 2013) as provided under section 80G(2)(iiihk) and section 80G(2)(iiihl), respectively. Elaborating further on his contention, the Ld. AR submitted that as the claim of the assessee company for deduction under section 80G was not in respect of any CSR related donations made towards either of the aforesaid two funds, i.e, "Swach Bharat Kosh" or "Clean Ganga Fund", therefore, its claim for deduction was in order and thus, had rightly been allowed by the CIT(A). The Ld. AR in support of his aforesaid contention had relied on the consolidated order of the ITAT, Hyderabad Benches "B", Hyderabad in Deloitte Tax Services India Private Limited Vs. DCIT-Circle 8(1), Hyderabad, ITA

341/Hyd/2023, dated 19/06/2024 and Deloitte & Touche Assurance & Enterprise Risk Services India Private Limited Vs. DCIT, Circle 8(1), Hyderabad, ITA No. 342/Hyd/2023, dated 19/06/2024.

17. We have given thoughtful consideration to the aforesaid issue, and find that the CIT(Appeals) had deleted the disallowance of the claim of the assessee company for deduction under section 80G of the Act of Rs. 1.88 crore (approx) by following the decision of the **ITAT, Hyderabad** in **Optum Global Solutions (India) Private Limited Vs. DCIT Circle 5(1), Hyderabad, ITA 145 & 482/Hyd/2022, dated 16/08/2023**, wherein it has been held that there is no blanket prohibition under the Income-tax Act against allowing deduction under section 80G in respect of CSR-related donations, except in cases specifically barred under section 80G(2)(iiihk) and section 80G(2)(iiihl). For the sake of clarity, we deem it apposite to cull out the observations recorded by the Tribunal in the case of Optum Global Solutions (India) Private Limited Vs DCIT(supra), as under:

> **"10.** We have gone through the record in the light of the submissions made on either side. Insofar as the payments made to the PM Relief Fund and to the institutions enumerated by the learned AR are concerned, it is a matter of verification. Learned Assessing Officer disallowed such a deduction not on the ground of non-payments, but because the assessee claimed such spending incompliance with their legal obligation under section 135 of the Companies Act. According to the learned Assessing Officer, by showing such an amount as spending incompliance with section 135 of the Companies Act, the assessee had the benefit of compliance with such a provision and, therefore, the matter ends there insofar as such payments are concerned. Except the business expenditure covered by section 30 to

36 of the Act as stipulated under section 37(1) of the Act, no other expenditure is allowable and this position is made amply clear by insertion of Explanation-2 to section 37(1) of the Act. It says that any expenditure incurred towards the activities relating to CSR, shall not be deemed to be an expenditure incurred for the purpose of business.

11. It is, therefore, clear that the question that is relevant to be answered on this issue is whether the donations given for compliance with the provisions under section 135 of the Companies Act, to the institutions mentioned in section 80G(2) of the Act are qualified for deduction under section 80G of the Act also.

12. Explanation-2 to section 37(1) of the Act says that any expenditure relatable to the discharge of CSR, is not a business expenditure and cannot be allowed as such. On this aspect, there is no contradiction of the fact submitted by the learned AR that in compliance with this requirement, the assessee does not claim any deduction of such amount spent as CSR under any of the provisions between 30 and 36 of the Act, and suo moto disallowed the same by adding it back to the P&L account. It is only thereafter the business income of the assessee is computed in accordance with the principles laid down for computation of the profits and gains of business or profession in sections 28 to 44DB of the Act. By this, the assessee seeks compliance with Explanation-2 of section 37 of the Act and, therefore, the Revenue shall not have any grievance. Whether or not the assessee suo moto disallowed the spend towards the CSR while computing the business income is a verifiable fact.

13. After computing the business income, while computing the total income of the assessee, the assessee is invoking the benefit under chapter-VIA by claiming deduction of the sums under section 80G of the Act. According to the Revenue, when once such sum went to satisfy the requirement of section 135 of the Companies Act, the benefit gets exhausted and such an amount is no more available for the purpose of claiming deduction under section 80G of the Act.

14. Coming to the Income-tax Act, 1961, there is no express provision to support the contention of Revenue. On the other hand, section 80G(2)(iiihk) and (iiihl) of the Act expressly provide that such sums donated for Swatch Bharath Kosh and Clean Ganga Fund shall be the amounts other than the sums spent by the assessee in pursuance of CSR, meaning thereby the donations made towards Swatch Bharath Kosh and Clean Ganga Fund spent as a part of CSR are not qualified for deduction under section 80G of the Act. Out of so many entries under section 80G(2) of the Act, only donations in respect of two entries are restricted if such payments were towards the discharge of the CSR. The Legislature could have put a similar embargo in respect of the other entries also, but such a restriction is conspicuously absent for other entries. The irresistible conclusion that

would flow from it is that it is not the legislative intention to bar the payments covered by section 80G(2) of the Act which were made pursuant to the CSR, and other than covered by section 80G(2)(iiihk) and (iiihl) of the Act. As stated above, clue can be had from the restrictions by way of section 80G(2)(iiihk) and (iiihl) of the Act.

15. This aspect has been dealt with by successive Co-ordinate Benches in the cases relied upon by the assessee. While elaborately discussing this issue in the case of JMS Mining (P.) Ltd. (supra), the Kolkata Bench of the Tribunal discussed this issue in the following manner:

> "22. From a bare reading of the section 80G of the Act we note that deduction under this section has to be made in accordance with and subject to the provisions of this section i.e. section 80G of the Act. As per this section i.e. section 80G of the Act, an amount equal to fifty percent (50%) of the aggregate of the sums specified in sub-section 2 [refer sub-clause (iv) of clause (a) of Sub-section 2 of section 80G of the Act read with section 80G (1) (ii)] which allows the donation given to any other Fund or any institution to which this section applies and if it satisfies the requirement of sub-section (5) of section 80G of the Act, then 50% of the donation is allowable expenditure [refer section 80G (1) (ii)]even if the assessee has included the expenditure as CSR Expenditure because there is no prohibition or restriction placed by the Parliament on such a donation even if shown as CSR expenditure. The reason for saying so is that in section 80G of the Act certain restrictions in respect of deduction in respect of two (2) donations are expressly seen in this section. So the Parliament has expressed its intention clearly by bringing in restriction in respect of expenditure classified by an assessee company while claiming deduction u/s. 80G of the Act i.e. CSR expenditure related to Swachh Bharat Kosh and Clean Ganga Fund. So if an assessee makes some donation to these projects and include/classify it as CSR expenditure while claiming deduction u/s. 80G of the Act then it will be allowed only the amount that is other than the sums spent by the assessee in pursuance of CSR u/s. 135 of the Companies Act. In other words, if an assessee company spends only the mandatory expenditure of 2% of net profit for CSR activity, which includes the amount of donation to Swach Bharat Kosh & Clean Ganga Fund (iiihk) and (iiihi) of clause (a) of sub-section (2) of section 80G of the Act, then deduction u/s. 80G of the Act is not allowable, which can be illustrated by giving certain examples (infra). However, in a case scenario, wherein the assessee expends the mandatory expenditure and gives donation to these two projects i.e. over and above the mandatory CSR expenditure u/s. 135 of Companies Act, that sum donated to Swach Bharat Kosh & Clean Ganga Fund will be eligible for

100% deduction u/s. 80G of the Act [refer section 80G (1)(i) and subject to section 80G (4)]. However, such a restriction in respect of expenditure made by an assessee to any other fund or institution as referred to in sub clause (iv) of clause (a) of sub-section 2 of section 80G of the Act had not been placed by the Legislature. And if the Parliament desired, it could have been made such kind of restriction or any restriction like in the case of donation to Swach Bharat Kosh & Clean Ganga Fund. So the assertion of Ld. PCIT that AO could not have allowed deduction u/s 80G of the Act to an assessee on the CSR expenditure/donation to an institution u/s 80G(2)(a)(iv) which is enjoying certificate 80G(5)(vi) of the Act, is erroneous and therefore cannot be accepted. For this, we rely on the interpretation maxim "Expressio Unius Esl Exclusio Alterius" which is a Latin phrase that means "express mention of one thing excludes all others. This is one of the rules used in interpretation of Statutes. The phrase indicates that items not on the list are assumed not to be covered by the Statute. When something is mentioned expressly in a Statute, it leads to the presumption that the things not mentioned are excluded. This is an aid to the construction of Statutes. Applying the legal maxim 'expressio unius est exclusio alterius', it can be safely inferred that when the Legislature in particular has provided for only the above referred two specific exceptions in section 80G, then it is the implied intent of the Legislature to permit deduction u/s 80G in respect of CSR contributions made to funds/organizations referred to in all other sub-clauses of section 80G [other than (iiihk) and (iiihl)] of the Act. The above analysis made by us, can be cumulatively illustrated by the following examples for ease of understanding purpose only and should not be cited for making claim which should be made subject to the facts and law involved in each case and also subject to section 80G(4) of the Act:

Example.—A company has reported eligible net profit u/s 135 of Companies Act, 2013 at Rs. 100 crores. The minimum CSR contribution of 2% under section 135(5) of the Act works out to be Rs. 2 crores.

Situation 1 : The company has been spent the required minimum CSR contribution of Rs. 2 crores towards construction of roads & schools in the vicinity of the backward area where the factory is located.

Tax Treatment: The entire CSR expenditure of Rs. 2 crores is to be disallowed and added back in terms of Explanation 2 to section 37(1) of the Act.

Situation 2 : The company has contributed Rs. 3 crores to Swach Bharat Kosh.

Tax Treatment: The entire CSR expenditure of Rs. 3 crores is to be disallowed and added back in terms of Explanation 2 to section 37(1) of the Act. In terms of section 135(5) of the Act read with section 80G(iiihk) only the excess sum paid amounting to Rs. 1 crores [3 crores - 2% of 100 crores] can be availed as deduction u/s 80G of the Act.

Situation 3 : The company has contributed Rs. l crore to Swach Bharat Kosh and Rs. 1 crore to any other charitable trust registered u/s 80G(5) of the Act.
Tax Treatment: The entire CSR expenditure of Rs. 2 crores is to be disallowed and added back in terms of Explanation 2 to section 37(1) of the Act. In terms of section 135(5) of the Act read with section 80G(iiihk) the donation of Rs. l crores made to Swach Bharat Kosh is not eligible for deduction u/s 80G of the Act. The company can claim deduction of fifty percent of the donation of Rs. 1 crores paid to any other registered charitable trust u/s 80G(2)(iv) read with section 80G(1)(ii) of the Act.

Situation 4 : The company has contributed Rs. 1 crore to Prime Minister's National Relief Fund and Rs. 1 crore to any other charitable trust registered u/s 80G(5) of the Act.

Tax Treatment: The entire CSR expenditure of Rs. 2 crores is to be disallowed and added back in terms of Explanation 2 to section 37(1) of the Act.

The company can claim deduction for hundred percent of the donation of Rs. 1 crores paid to Prime Minister's National Relief Fund u/s 80G(2)(iiia) read with section 80G(1)(i) of the Act.

The company claim deduction to the extent of fifty percent of the donation of Rs. 1 crores paid to any other registered charitable trust u/s 80G(2)(iv) read with section 80G(1)(ii) of the Act.

23. As discussed supra, we concur with the contention of the assessee that since Parliament intended certain restrictions to only CSR expenditure in respect of two donations included by an assessee as CSR expenditure i.e. [Swachh Bharat Kosh and Clean Ganga Fund] has impliedly not made any prohibition/restriction in respect of claim of CSR expenses in other cases if it is otherwise eligible under section 80G of the Act. In this context we find that the assessee has made donation of Rs. 1.25 crores on 20-1-2016 by RTGS dated 19-1-2016 through UCO Bank which is evident from page 18 of PB which is received by Shree Charity Trust which was 80G(5)(vi) certificate of the Department dated 15-1-2009 placed at page 17 of PB.

> The assessee has also made payment of Rs. 10 Lakhs to Pt. Jashraj Music Academy Trust which is found placed at page 22 & 23 and the approval u/s 80G (5)(vi) of the Act in respect of Pt. Jashraj Music Academy Trust is found placed at page 19 of PB dated 30-3-2012 given by Director of Income-tax (Exemption). Therefore, since the assessee satisfies the condition u/s. 80G of the Act of the donees, the assessee's claim for deduction of CSR expenses/contribution u/s 80G of the Act was allowed after enquiry by the AO. Thus we are of the opinion that the action of the AO allowing the claim u/s. 80G of the Act is a plausible view and is in line with the ratio of the decision of Tribunal cited (supra). Therefore we find that the Ld. PCIT has not been able to make out a case that on this issue raised by him, the AO's order is erroneous as well as prejudicial to the revenue. So the jurisdictional fact as well as law is absent for invoking revisional jurisdiction. Therefore, the usurpation of jurisdiction by Ld. PCIT u/s 263 of the Act is bad in law and therefore need to be quashed and we order accordingly".
>
> **16.** We are in agreement with such observations and findings of the Co-ordinate Bench of the Tribunal and while respectfully following the same, we hold that inasmuch as the assessee satisfied the conditions of section 80G of the Act, the assessee is entitled to claim deduction under section 80G of the Act in respect of such donations which formed part of the spend towards CSR. Accordingly, we hold Ground No. 2 in favour of the assessee."

18. We have given thoughtful consideration to the reasoning adopted by the CIT(Appeals), which, in our view, is in consonance with the statutory scheme of section 80G of the Act. We concur with the Ld. AR that the legislature, in all its wisdom, while consciously excluding certain CSR-related donations from the ambit of section 80G of the Act, has not extended such exclusion to the other eligible donations. Therefore, once the conditions of section 80G are satisfied, the deduction cannot be denied merely because the donation also forms part of CSR expenditure. We, thus, respectfully follow the view taken by the Tribunal in Optum Global Solutions (India) Private Limited Vs DCIT(supra) and,

thus, finding no infirmity in the view taken by the CIT(A), who had rightly vacated the disallowance of the claim of the assessee company for deduction u/s 80G of Rs. 1,88,97,644/-, uphold the same. The **Ground of appeal no. 3** raised by the revenue is dismissed.

19. We shall now take up the claim of the revenue that the CIT(A) had erred in law and facts of the case in vacating the disallowance of the claim of deduction of the assessee company of Rs. 24,35,05,411/- raised under section 80IA of the Act in respect of profits derived from power generation units.

20. Shri. Narendra Naik, Ld. CIT-DR, relied on the assessment order regarding declining of the claim for deduction under section 80IA of the Act of the assessee company. The Ld. CIT-DR submitted that as the assessee company had not maintained separate books of accounts for its eligible business of power generation, therefore, its claim for deduction under section 80IA of the Act was, inter alia, on the said ground rightly declined by the AO. The Ld. CIT-DR to support his contention has relied on the order of the Hon'ble Supreme Court in the case of Arisudana Spinning Mills Ltd. Vs. CIT, Ludhiana (2012) 348 ITR 385 (SC). Also, the Ld. CIT-DR had pressed into service the judgment of the Hon'ble Supreme Court in Pr. CIT Vs. Wipro Ltd. (2022) 446 ITR 1 (SC). The Ld. CIT-DR submitted that the Hon'ble Apex Court had observed, that as per the settled position of law, an assessee

claiming exemption has to strictly and literally comply with the exemption provisions. Apart from that, the Ld. CIT-DR submitted that as the assessee company has failed in obtaining the approval/permission as required per the mandate of Rule 18BBB, thus, on the said count also it was not eligible for deduction u/s 80IA of the Act. Elaborating further on his contentions, the Ld. CIT-DR submitted that as the assessee company had failed to cumulatively satisfy the set of conditions for claiming deduction under section 80IA of the Act, therefore, the same had rightly been declined by the AO while framing the assessment.

21. Per Contra, the Ld. AR rebutted the factual contentions of the revenue. The Ld. AR submitted that the Ld. CIT-DR is factually incorrect in stating that the power division, i.e., the “eligible business” of the assessee company had not maintained separate books of accounts. The Ld. AR to buttress his contentions had drawn our attention to the Profit & loss account, Balance sheet and annexures of the “Power division” of the assessee company for the year under consideration, Page Nos. 97 to 109 of APB. Elaborating further on his contention, the Ld. AR submitted that as the assessee company had cumulatively satisfied the set of conditions contemplated under section 80IA of the Act, therefore, its claim for deduction was in order. Also, the Ld. AR to buttress his contention had drawn our attention to the audit report filed

by the assessee company under Section 80IA(7) in “Form 10BB” r.w Rule 18BBB for the year under consideration, Page Nos. 114 to 117 of APB.

22. Ostensibly, the AO had denied the deduction under Section 80IA of the Act claimed by the assesseee company mainly on three grounds, viz. (i) alleged non-compliance with Rule 18BBB for want of approval/permission; (ii) non-maintenance of separate books of account; and (iii) alleged double deduction and non-adjustment of earlier losses.

23. On a careful perusal of the record, we find that as observed by the CIT(A), the assessee company had in the course of the assessment and appeal proceedings furnished consent of operations, permission for setting-up power plants from Ministry of Commerce and Industry, agreement with Telangana State Power Co-ordinate Committee, i.e., approvals, permissions, and agreements from Central Government as well as State Government, which, as rightly observed by the CIT(A) collectively satisfy the requirement of rule 18BBB(4). It will be relevant to point out that the rule 18BBB(4) does not mandate any specific format of approval and requires only that the activity be carried on with the approval or permission of the competent authority. We, thus, find no infirmity in the view taken by the CIT(A), who had rightly observed that

the assessee company has duly fulfilled the condition specified under sub-rule (4) of Rule 18BBB, and uphold the same.

23.1. Apropos the issue of maintenance of separate accounts by the assessee company regarding its eligible business, we find that the CIT(A) after taking cognizance of the said observation of the AO, observed that the AO in his “remand report”, dated 09/01/2024, had stated that the assessee company has submitted the signed financials of the Thermal Power Division and WHR Power Divisions as additional evidence. On a perusal of the record, we find that the assessee company had placed on record the audited financial statements of the eligible power divisions during the appellate proceedings, Page Nos 96-109 of APB. In our view, the mere fact that consolidated financial statements were also prepared by the assessee company does not, by itself, disentitle it from claiming the deduction under section 80IA of the Act, particularly when the segmental accounts are available and the profits of the eligible units can be reasonably ascertained. We, thus, find no infirmity in the view taken by the CIT(A) on the aforesaid issue, and uphold the same

23.2. Apropos the issue of adjustment of losses, it is evident from the record that the assessee company had commenced claiming deduction under section 80IA only from the year in which the eligible units turned profitable, which is permissible under the Act. Our aforesaid view is

supported by the judgment of the **Hon'ble High Court of Madras** in the case of **Velayudhaswamy Spinning Mills (P) Ltd. Vs. ACIT (2012) 340 ITR 477 (Madras)**. The Hon'ble High Court in its order had observed that, once losses and depreciation from an eligible unit were set off against other income in previous years, they should not be reopened or notionally carried forward again to reduce the Section 80IA deduction in the chosen initial assessment year. We find that the "SLP" filed by the revenue against the aforesaid order of the Hon'ble High Court had been dismissed by the **Hon'ble Supreme Court** in A**ssistant Commissioner of Income-tax, Tirupur Vs. Velayudhaswamy Spinning Mills (P.) Ltd. (2016) 76 taxmann.com 176 (SC).** Apart from that, we find that even otherwise, the AO has not brought on record any specific computation demonstrating that the unabsorbed losses of the eligible units have not been appropriately considered.

23.3. We, thus, in view of the above factual and legal position, find no justification to interfere with the order of the CIT(Appeals), who, in our view, had rightly allowed the claim of the assessee company for deduction of Rs. 24.35 crore (approx.) under section 80IA of the Act, and thus, uphold the same. The **Ground of appeal No. 4** raised by the revenue is dismissed.

24. We shall now take up the grievance of the revenue that the CIT(A) had grossly erred in law and facts of the case in vacating the

addition of Rs. 1,29,91,000/- made by the AO under section 68 in respect of its sale transactions with M/s. Lakshin Infradev Pvt. Ltd.

25. The Ld. CIT-DR submitted that as the assessee company had entered into bogus transactions with M/s Lakshin Infradev Pvt. Ltd., i.e., a bogus accommodation entry provider entity, therefore, the AO had rightly made an addition of the value of such transactions by treating the same as unexplained cash credits in the hands of the assessee company. The Ld. CIT-DR to support his contention had relied on the judgment of the Hon'ble Supreme Court in N.K Proteins Ltd. Vs. DCIT (2017) 84 taxmann.com 195 (SC).

26. On a perusal of the orders of the authorities below, we find that the addition of Rs. 1.29 crore (approx) was made by the AO solely on the basis of an investigation report of the DDIT(Investigation)– Unit 3(3), New Delhi, as was shared with him by the DCIT, Circle 5(1), Hyderabad on 30.06.2021, alleging that the aforementioned party, viz. M/s Lakshin Infradev Pvt. Ltd. was a paper entity that was engaged in raising bogus invoices to route funds.

27. It is an undisputed fact that the assessee company had recorded the sales made to the aforementioned party, viz. M/s Lakshin Infradev Pvt. Ltd in its books of account, included the same in its turnover, and received the sale consideration through banking channels. Also, it

transpires that the assessee company, to substantiate the subject sale transactions, had furnished, with the authorities below, documentary evidence in the form of invoices, ledger extracts, and bank statements etc. Also, we find that the AO did not carry out any independent verification of the material furnished by the assessee company, nor was the assessee company afforded an opportunity to cross-examine any third party whose statements were relied upon for drawing adverse inferences in its case. In our view, once the receipts are duly recorded in the books of account of the assessee company and form part of its business turnover, which the AO had accepted while quantifying the assessed income of the assessee company, then the same could not have been recharacterized as an unexplained cash credit within the meaning of section 68 of the Act. In fact, we are unable to comprehend that on the one hand, the AO, while assessing the income of the assessee company, had accepted the subject transactions as part of the duly recorded sale transactions, but at the same time had recharacterized the same as unexplained cash credit under section 68 of the Act.

28. We, thus, find no infirmity in the view taken by the CIT(A), who had rightly held that the recorded sales receipts of the assessee company could not have been summarily held as unexplained cash credits in its hands, as the same would result in double taxation.

Accordingly, we find no infirmity in the order of the CIT(A), who had rightly vacated the addition of Rs. 1.29 crore (supra) made by the AO under section 68 of the Act. In view of the foregoing discussion, we uphold the order of the CIT(Appeals) in deleting the addition of Rs. 1,29,91,000/-. The **Ground of appeal No. 5** raised by the revenue is dismissed in terms of our aforesaid observations.

29. Resultantly, the appeal filed by the Revenue in ITA No. 1083/Hyd/2024 for AY 2017-18 is dismissed

ITA No. 1084/HYD/2024
AY: 2018-19

30. We shall now take up the appeal filed by the revenue for AY 2018-19 in ITA No. 1084/Hyd/2024.

31. The captioned appeal filed by the Revenue is directed against the order passed by the CIT(Appeals), National Faceless Appeal Centre, dated 22.08.2024**,** which in turn arises from the assessment order passed by the Assessing Officer under section 143(3) r.w section 144B of the Income-tax Act, 1961 (for short, "Act"), dated 03.09.2021, for the Assessment Year 2018-19. The Revenue has assailed the impugned order of the CIT(Appeals) on the following grounds of appeal before us:

> "1. The learned CIT(A) erred in deleting the addition of Rs. 1.10 crores made by the AO u/s when the AO can make disallowance based on the facts and which is permissible as per CBDT Circular No.5/2024 dt.11.02.2014.

2. The CIT(A) erred in appreciating that in the assessee's own case for the AY 2013-14 & 2014-15, appeals filed by the revenue on the same issue before the Hon'ble High Court vide ITTA Nos.178/2019 & 179/2019 are pending adjudication.

3. The CIT(A) erred in deleting the addition u/s 80G of Rs.1.85 crores made by the AO and in appreciating that the CSR expenditure is "mandatory" but donations u/s 80G are voluntary in nature.

4. The learned CIT(A) erred in deleting the addition of Rs.16.31 crores and in appreciating that said addition was made by the AO on estimate basis only after carrying out independent verification u/s 133(6) and pointing out that the purchases under cement division were not totally verifiable.

5. The CIT(A) erred in appreciating that the income of Rs.1,24,717 representing "scrap sales and interest income" is akin to "income from other sources" but not "business income.

6. Any other ground(s) that may be urged at the time of appeal hearing."

32. Succinctly stated, the assessee company had filed its return of income for AY 2018-19 under section 139(1) of the Act on 30.11.2018, declaring an income of Rs.141,83,11,120/-, and “book profit” under Section 115JB of the Act of Rs. 230,21,15,364/-. Subsequently, the case of the assessee company was selected for complete scrutiny under the E-assessment Scheme, 2019, on various issues, viz. business purchases, deduction claimed under section 80IA, and expenses incurred for earning exempt income.

33. Thereafter, the AO vide his order passed under section 143(3) r.w section 144B of the Act, dated 03.09.2021, determined the income of the assessee company at Rs. 161,11,36,087/- under the normal provisions and “book profit” under section 115JB at Rs. 231,31,26,864/-

after making certain additions/disallowances, viz. (i). disallowance under section 14A r.w Rule 8D, after taking cognizance of the fact that the assessee company had earned exempt dividend income of Rs. 13.20 crore during the year from its investments, and rejecting its claim of not having incurred any expenditure and computing the disallowance at 1% of the annual average of investments of Rs. 110.115 crores: Rs. 1,10,11,500/-; (ii). disallowance of the claim of the assessee company for deduction under section 80G in respect of donations forming part of CSR expenditure, holding that CSR expenditure being mandatory in nature could not qualify for deduction under section 80G except in cases specifically provided: Rs. 1,85,88,450/-; (iii). an estimated disallowance of 1% of the total expenses of the cement division, alleging inflation of non-eligible business expenditure and understatement of eligible business expenditure of the assessee company to enhance its claim for deduction under section 80IA of the Act: Rs. 16.31 crores; and (iv). addition of scrap sales and interest income on the ground that the same was not “derived from” the eligible business under section 80IA of the Act: Rs. 1,24,717/-.

34. Aggrieved, the assessee company carried the matter in appeal before the CIT(Appeals). During the course of appellate proceedings, the assessee company filed “additional evidence” relating to its claim for deduction under section 80IA of the Act, including its plant-wise

production and coal consumption data, that was admitted and forwarded to the AO for remand report. In reply, the AO submitted a "remand report" dated 09.01.2024. Thereafter, the assessee company filed its rejoinder dated 08.08.2024.

35. The CIT(Appeals) found favour with the contentions advanced by the assessee company and deleted all the additions/disallowances made by the AO. For the sake of clarity, we deem it apposite to cull out the observations of the CIT(A), as under:

> 3. Grounds No.1 and 6 raised are general in nature and hence there is no need of separate adjudication. Ground No.2 is raised against the addition made u/s 14A r.w.rule 8D amounting to Rs.1,10,11,500/-. During assessment proceedings assessee was asked to furnish monthly averages of the opening and closing balances of the value of investment. Details of investments are as follows;

	Opening Balance	Closing Balance	Annual Average
Parasakti Cement Industries Ltd	16.60 Cr	16.60 Cr	16.60 Cr
Andhra Pradesh Gas Power Corporation Ltd	1.70 Cr	2.15 Cr	1.925 Cr
Pioneer Cement Industries Ltd	58.32 Cr	124.86 Cr	91.59 Cr
TOTAL			110.115 Cr
1% of annual average			Rs. 1,10,11,500/-

> The company replied that investments in equity shares of various companies in earlier years were out of interest free funds in the form of capital and free reserves and the company had not incurred any expenses with respect to the investments made. Further, during the Financial Year 2017-18 the company has not earned any exempt income from the above investments and as such the provisions of section 14A shall not be applicable to the company. Assessing Officer held that, incurring no expenditure, as stated by the assessee above, in managing investments of such huge amounts of requiring not only manpower, but also expertise in the field, decision making and technical expertise as well, fails the test of human probability. Further, as per Section 14A(3), it is also applicable even if no expenditure has been incurred by the assessee. On the issue of whether in the

absence of exempt income earned/claimed during the concerned year, disallowance could be made under section 14A, the departmental SLP against the order of High Court in IL&FS Energy Development Company Ltd. [2017] 84 taxmann.com 186 (Delhi) was still pending before the Supreme Court. In view of the above, an amount of Rs.1,10,115,000 was added to the total income of the assessee.

3.1 According to the newly inserted explanation to section 14A, notwithstanding anything to the contrary contained in the act, the provisions of section 14A shall apply and shall be deemed to have always applied in a case where the income not forming part of the total income has not accrued or arisen or has not been received during the year and the expenditure has been incurred during the year in relation to such income. In the case of NCC Infrastructure Holdings Limited (ITA No. 144/Hyd/2023), the jurisdictional Hyderabad ITAT held that, the amendment of section 14A of the Act which is 'for removal of doubt' cannot be presumed to be retrospective even where such language is used, if it alters or changes law as it earlier stood and concluded that no disallowance under section 14A of the Act can be made if the assessee had not earned any exempt income during the year under consideration. The tribunal relied on the Delhi High Court cases of Era Infrastructure (India) Ltd., (2022) 141 taxmann.com 289 and IL&FS Energy Development Co. Ltd, (2017) 84 taxmann.com 186 and also the memorandum of Finance Bill, 2022 accordingly to clauses 5 to 7 thereof.

3.2 In the instant case the appellant had invested in subsidiary cement companies as part of expansion of business which are strategic investments and not for the purpose of earning exempt income. As on 31.03.2018 Investment in Pioneer Cement Industries Ltd was Rs.124.86 crores. Pioneer was incorporated in the Financial Year 2010-11 with the objective of setting-up cement manufacturing plant in the state of Rajasthan and the cement plant is under construction. Further, pioneer is a wholly owned subsidiary of the assessee company and plant was still under work-in-progress. Parasakti Cement Industries Ltd in which the appellant company invested Rs.16.50 crores is also engaged in the business of manufacturing and sale of cement. Parasakti is an associate enterprise of the company. These investments were made out of own funds and the company has not earned any exempt income during the Financial Year 2017-18. Investment in Andhra Pradesh Gas Power Corporation Ltd was only Rs.1.90 crores. APGPCL is a government company and the investment was made to ensure supply of power to the cement plants of the company and not for earning any income. Moreover, APGPCL operates on "No Profit and No Loss" basis and do not issue any dividend. In the case of HOLCIM INDIA P. LTD (ITA No. 486/2014 & ITA No. 299/2014), High Court of Delhi deleted the disallowance u/s 14A stating that the respondent-assessee, therefore, had to incur expenditure for the business in the form of investment in shares of cement companies and to further expand and consolidate their business. Expenditure had to be also incurred to protect the investment made. The genuineness of the said expenditure was not

doubted by the Assessing Officer. Appellant invested its own fund from reserves and surplus in subsidiary cement companies for expansion of business. The company has never received any income or dividends from these investments. Accordingly, there is no question of disallowance of expenses against exempt income. As a result, ground no 2 is allowed.

4. Ground No.3 is raised against disallowance of 80G deduction amounting to Rs. 1,85,88,450 claimed against CSR expenditure. The company extended following donations out of the CSR expenses;

S No.	Name of the Party	Date	Amount in Rs.
1	Mahabodhi Buddha Vihara	11-05-2017	5,50,000
2	Delhi Telugu Academy	08-11-2017	2,00,000
3	Ramakrishna Math	21-10-2017	5,00,000
4	Sri Ramanuja Sahasrabdi	16-12-2017	2,00,00,000
5	Nemi Foundation	27-02-2018	10,00,000
6	LEPRA Society	23-01-2018	10,00,000
7	Hyderabad Round Table No. 8 Charitable Trust	12-10-2017	6,00,000
8	Sri Ramakrishna Seva Samithi	06-03-2018	10,00,000
	Sub Total		**2,48,50,000**
9	Sahrudaya Health, Medical & Educational Trust	30-04-2017	7,00,000
		31-05-2017	8,00,000
	Sub Total		**15,00,000**
10	Pioneer Educational Trust	30-04-2017	1,36,749
		31-05-2017	15,00,000
		30-06-2017	10,96,280
		08-07-2017	1,00,000
		31-07-2017	10,14,960
		31-08-2017	10,06,011
		09-09-2017	19,845
		31-10-2017	10,31,885
		30-11-2017	10,00,000
		30-12-2017	10,00,000
		31-01-2018	10,00,000
		28-02-2018	10,00,000
		31-03-2018	10,00,000
	Sub Total		**1,09,05,730**
	Total		**3,72,55,730**

50% of the amount being claimed as deduction was disallowed by the assessing officer because CSR expenditure by the assessee forms a part of the mandatory requirement of the Companies Act, 2013 and consequently not eligible for deduction under section 80G of the Incometax Act, 1961. The AO held that the intent of the legislature was to restrict deduction (if not specifically provided like in case of PM CARES fund) under section 80G, even if the contribution qualifies as CSR expenditure under the Companies Act 2013. Thus, an amount of Rs.1,85,88,450 was disallowed and added to the total income of the assessee.

4.1 Regarding the issue of claiming 80G deduction against CSR expenditure, the jurisdictional Hyderabad ITAT has held in the case of Optum Global Solutions (India) Private Limited (ITA-TP Nos. 145 &

482/Hyd/2022) that, coming to the Income Tax Act, 1961, there is no express provision to support the contention of Revenue. On the other hand, section 80G(2)(iiihk) and (iiihl) of the Act expressly provide that such sums donated for Swatch Bharath Kosh and Clean Ganga Fund shall be the amounts other than the sums spent by the assessee in pursuance of CSR, meaning thereby the donations made towards Swatch Bharath Kosh and Clean Ganga Fund spent as a part of CSR are not qualified for deduction under section 80G of the Act. Out of so many entries under section 80G(2) of the Act, only donations in respect of two entries are restricted if such payments were towards the discharge of the CSR. The Legislature could have put a similar embargo in respect of the other entries also, but such a restriction is conspicuously absent for other entries. The irresistible conclusion that would flow from it is that it is not the legislative intention to bar the payments covered by section 80G(2) of the Act which were made pursuant to the CSR, and other than covered by section 80G(2)(iiihk) and (iiihl) of the Act. As stated above, clue can be had from the restrictions by way of section 80G(2)(iiihk) and (iiihl) of the Act. (para 16) We are in agreement with such observations and findings of the Coordinate Bench of the Tribunal and while respectfully following the same, we hold that inasmuch as the assessee satisfied the conditions of section 80G of the Act, the assessee is entitled to claim deduction under section 80G of the Act in respect of such donations which formed part of the spend towards CSR. Respectfully following the jurisdictional tribunal, ground no 3 is allowed.

5. Ground No.4 is raised against disallowance of business expenses on estimate basis amounting to Rs.16,31,00,000/- on account of deduction U/s 80IA. During the assessment proceedings, the AO called for information with respect to major expenses for few months and details of top 5 suppliers. The assessee company submitted the ledger extracts of major expenses and top suppliers. The AO has also obtained the information from major suppliers through notices U/s 133. The AO analysed part ledgers for major expenses and ledgers of top suppliers submitted by the assessee company with the information obtained from suppliers and identified certain differences in suppliers' balances. Based on the differences identified, the AO arrived at a conclusion that the assessee company has overstated expenses of cement business and understated the expenses of power business and disallowed the business expenses on estimated basis to the tune of Rs.16.31 crores.

5.1 During the course of appeal proceedings, the Appellant on this particular ground (deduction u/s 80IA) has submitted additional evidence (submitting the Plant-wise Production Report (DPR) as on 31-03-2018 reflecting the coal consumption) and the same were forwarded to the Assessing Officer for remand report. Assessing officer verified transaction with Andru Minerals, Sri Sri Subramanyeswara Transport, Simhapuri Transport Company, Pioneer Builders Limited and found that are all engaged in transport, but their entries have been registered under purchase of Aluminium Laterite and Gypsum Phosphate which constitute raw materials of cement manufacture. In respect of those entities which accepted that they

supplied raw materials to the assessee. The following mismatches were recorded:

Name of entity	Raw material traded	Value as per third party	Value as per assessee
Vedanta	Gypsum Phospo	11,79,945	20,41,036
Coromandel International Ltd	Gypsum Phospo	2,11,44,349	2,18,35,395
RS Impex	Aluminium Laterite	2,74,167	2,61,441
SS Minerals	Aluminium Laterite	2,99,16,832	1,78,85,535
ABR Chemicals (as per assessee's books) BASHIR VARUVILAZHIKATHU SHAHUL HAMEED (name on records)	Aluminium Laterite	77,677	41,236
RAJA RAJESWARI LORRY TRANSPORT (as per assessee's submission) MULLANGI SIVA REDDY (as per record)	Coal	16,32,825	8,09,716
ASR TRANSPORT	Gypsum Phospho	97,34,795	3,86,02,701
Singareni Collieries	Coal	17,35,96,436	15,63,10,469
Vankateswara	Coal	3,92,261	3,92,261

From above analysis, AO concluded that the assessee has overstated expenditure of substantive business by including transport cost in purchases of raw materials and understating expenditure of power generation business so as to decrease profit of substantive business and enhance profit of power generating business by way of something similar to profit shifting. However, given the volume of transactions it would be difficult to measure the exact amount of expenditure so manipulated. As a conservative measure, Rs. 16.31 Crores equal to 1% of expenses shown to be incurred on cement division was accordingly disallowed and added to the total income.

5.2 Thus 1% of expenses of cement unit was disallowed from claim of deduction u/s 80IA corresponding to power unit. It may be noted here that among above expenses, only coal purchases are used for power generation. All other expenses in the above table are related to cement production ineligible for deduction u/s 80IA. Even the total coal consumption by cement divisions is 75.62% whereas the coal consumption by Thermal Power Division is only 24.38% of total coal consumption. As per findings of the AO coal purchases from Singareni Collieries was undervalued by Rs.1.73 crores and purchases through

Raja Rajeshwari Lorry Transport was undervalued by Rs.8,23,109. The appellant company explained that the mismatches in information received from suppliers are on account of invoices in transit, applicable taxes and as per INDAS-2 on inventories, the cost of materials shall comprise the cost of purchases, non-refundable taxes, transport, handling and other costs directly attributable to the acquisition of goods. Regarding purchases of coal from Singareni Collieries the appellant has given following reconciliation for entire year as opposed to monthly data perused by the AO;

Particulars	Amount in Rs.
Ledger balance in our books	**75,71,34,824**
Less: Invoices of FY 2016-17 booked in FY 2017-18	2,46,77,738
	73,24,57,086
Add: Invoices of FY 2017-18 booked in FY 2018-19	1,79,89,675
Purchases as per assessee's books	**75,04,46,761**
Sales declared as per SCCL	**75,04,29,329**
Difference (other charges)	17,432

Ledger Extract of M/s Singareni Collieries along with details of invoices accounted in FY 2018-19 was also submitted. It is also seen from the Annual Report that the accounting of each division is done separately and audited by Statutory Auditor. Form 10CCB was submitted based on the separate books of accounts maintained for cement, power and WHR divisions. The AO made percentage disallowance based on part information. There must be something more than bare suspicion to support the disallowance of deduction u/s 80IA. Reliance in this regard is placed on the decision in the case of CIT -vs.- J.J. Enterprises (2002) 122 Taxman 124 (SC) wherein the Hon'ble Supreme Court approving the decision of the lower authorities affirmed that the addition made on the basis of 'pure guess work' were unsustainable. The assessing officer has made percentage disallowance based on sample data of cement and coal divisions. Even if any specific expense was found bogus, it should be added to income from cement unit or power unit accordingly, instead of attributing them to 80IA deduction. Hence it is held that 1% disallowance of total expenses of the company from deduction u/s 80IA is unwarranted. As a result, ground no 4 is allowed.

6. Ground No.5 is raised against disallowance U/s 80IA to the tune of Rs.1,24,717. The assessee had shown income from scrap sales of Rs.1,00,779/- and interest income of Rs.23,938/- on deposits made against Bank Guarantees for purchase of coal. The appellant submitted that deposit is linked with the purchase of raw materials i.e., coal and scrap sales were made on account of scrap generated in the production of power and derived on account of the eligible business and as such the same shall be considered as eligible income U/s 80IA. The assessing officer held that the same cannot be allowed as a deduction because deduction u/s 80-IA is limited to profits and gains "derived from" such business. The jurisdictional Hyderabad ITAT has held in the case of Madhucon Projects Limited (ITA Nos. 637 &

> 710/Hyd/2020) that the income from sale of metal, scrap and other incomes earned otherwise are eligible for deduction u/s 80IA relying on the decision of the ITAT, Chennai in the case of L&T Transportation Infrastructure Ltd. Vs. ITO, [2011] 12 taxmann.com 499 (Chennai). Hence the disallowance of deduction under section 80-IA in respect of the sale of scrap and interest receipts is not sustainable. As a result, ground no 5 is allowed.
>
> 7. In result, the appeal is allowed."

36. The revenue aggrieved with the CIT(A) order has carried the matter in appeal before us.

37. Shri. Sourabh Soparkar, Senior Advocate – the Ld. Authorised Representative (for short, "AR") for the assessee company, at the threshold of hearing of the appeal, fairly submitted that the observation of the CIT(Appeals), wherein he had observed that the assessee company had during the subject year not received any exempt income during the relevant year, was factually incorrect. Elaborating on his contention, the Ld. AR submitted that the assessee company during the subject year was in receipt of dividend income of Rs. 13.20 crores on its 13200000 nos. of equity shares of M/s Parasakti Cement Ltd., which it had purchased @ Rs. 12.58/- per share for a total consideration of Rs. 16.60 crores out of its own funds in FY 2005-06. Our attention was drawn to the aforesaid factual position as was discernible from the "written submissions" filed by the assessee company in the course of the proceedings before the CIT(A). Apart from that, the Ld. AR submitted that though the assessee company during the subject year was holding 536000 shares of Andhra Pradesh Gas Power Corporation

Ltd., which it had purchased in the FY 2004-05 (176880 shares) and FY 2013-14 (359120 shares) sourced out of its own funds for the said respective years, but it had in the year in question not received any dividend income on the said shares. Further, we find on a perusal of the assessment order that the assessee company during the year under consideration was holding 12,48,61,078 shares of M/s Pioneer Cement Industries Limited (group entity), out of which it had claimed to have purchased 6,65,42,031 (nos. of shares) @ Rs. 10/- per share for a total consideration of Rs. 66,54,20,310/- during the year under consideration out of its own funds. Also, as is discernible from the assessment order, the assessee company had claimed that it had, during the year under consideration, not received any dividend income on the shares of M/s Pioneer Cement Industries Limited (supra). For the sake of clarity, the shares held by the assessee company and the dividend received by it on the said shares during the subject year, if any, is culled out as under:

Annexure

Penna Cement Industries Limited

Assessment Year 2018-19

Details of Investments and exempt income earned during the Financial Year 2017-18

S No	Year of Investment	Nature of Investment	Name of the Entity	No. of Shares	Price Per Share	Amount Invested	Source of Investment	Dividend received for the year
1	FY 2005-06	Equity Shares	Parasakti Cement Industries Ltd	1,32,00,000	12.58	16,60,00,000	Own Funds	13,20,00,000
2	FY 2004-05	Equity Shares	Andhra Pradesh Gas Power Corporation Ltd	1,76,880	150.15	8,04,80,000	Own Funds	NIL
	FY 2013-14			3,59,120				
3	FY 2012-13	Equity Shares	Pioneer Cement Industries Limited	1,09,13,170	10.00	10,91,31,700	Own Funds	NIL
	FY 2013-14			90,00,000	10.00	9,00,00,000		
	FY 2014-15			3,84,05,877	10.00	38,40,58,770		
	FY 2017-18			6,65,42,031	10.00	66,54,20,310		
	Sub Total			**12,48,61,078**		**1,24,86,10,780**		

Total Investments at Cost (1+2+3)	**1,49,50,90,780**
Less: IND AS Fair Value adjustment	5,89,80,000
Total Investments as per Balance Sheet	**1,43,61,10,780**

38. The Ld. AR submitted that as the assessee company at the relevant point of time had sufficient self-owned funds of Rs. 933.89 crores, viz. (i). equity share capital: Rs. 13.38 crore; and (ii). other equity: Rs. 920.51 crore to source the investment in the exempt dividend income yielding shares aggregating to Rs 143.61 crores (including those which have not yielded any exempt income during the subject year), therefore, it could safely be concluded that the entire investment was sourced out of own funds and thus, no part of the interest expenditure could be attributed to the said investments and disallowed in the hands of the assessee company. The Ld. AR to support his contention had relied upon the judgments of the **Hon'ble High Court of Bombay** in the case of **CIT Vs. HDFC Bank Limited (2014) 366 ITR 505 (Bom)** and **CIT Vs. Reliance Utilities and Power Ltd. (2009) 313 ITR 340 (Bom)**.

39. Apart from that, the Ld. AR submitted that qua the attribution of administrative expenses for the earning of exempt dividend income under section 14A r.w Rule 8D for the purpose of computing the annual average of the monthly average of the opening and closing balances of the value of investment, income from which does not or shall not form part of the total income, only the shares of M/s Parasakti Cement Limited (supra) which had yielded exempt income during the subject year were to be considered.

40. We have given thoughtful consideration to the contentions advanced by the Ld. AR's regarding the subject issue, and thus, in the backdrop of the correct factual position that the assessee company during the subject year had received exempt dividend income of Rs. 13.20 crore, shall hereinafter deal with the sustainability of the disallowance under section 14A r.w Rule 8D of Rs. 1,10,11,500/- made by the AO.

41. We find that it is a matter of fact borne on record that the assessee company had substantial interest-free funds far exceeding the value of investments made in the exempt dividend income yielding shares. In the absence of any material proving to the contrary, the presumption that is to be drawn is that the investments were made out of the own funds of the assessee company. The AO has failed to rebut this presumption by establishing a direct nexus between the borrowed funds and investments yielding exempt income. Rather, we find that the **Hon'ble High Court of Bombay** in the case of **CIT Vs. HDFC Bank Limited (2014) 366 ITR 505 (Bom)**, has held that where the assessee has own funds and other non-interest bearing funds which were more than investments made in the tax free securities, then no disallowance of any part of the interest expenditure under section 14A r.w Rule 8D(2) was liable to be made in its hands. It was observed that if there be interest free funds available with an assessee sufficient to meet its

investments, and at the same time the assessee has raised an interest free loan, it can be presumed that the investments were from the interest free funds available.

42. Apart from that, we find substance in the Ld. AR's contention that while computing "average value of investment" for the purpose of Rule 8D, only those investments shall be considered which have actually yielded exempt income during the relevant previous year. Thus, it is not the total investment at the beginning of the year and at the end of the year, which is to be considered, but it is the average of the value of investments, which has given rise to the income, which does not form part of the total income that is to be considered. Our aforesaid view is supported by the order of the **Hon'ble High Court of Delhi** in **ACB India Ltd. Vs. ACIT (2015) 62 taxmann.com 71 (Delhi).** Accordingly, as the assessee company before us had during the subject year only received exempt dividend on the shares of M/s Parasakti Cement Limited (supra), therefore, as stated by the Ld. AR, and rightly so, for computing "average value of investment" for the purpose of Rule 8D(ii), only its investment in the shares of M/s Parasakti Cement Limited (supra), which had yielded exempt income during the year under consideration, were to be considered. Thus, it is not the total investment at the beginning of the year and at the end of the year, which is to be considered, but it is the average of the value of investments which has

given rise to the income, which does not form part of the total income which is to be considered.

43. Admittedly, it is an undisputed fact that an exempt income of Rs. 13.20 crore was earned by the assessee company during the year under consideration. However, the earning of exempt income by the assessee company, by itself, does not automatically warrant the application of Rule 8D. Section 14A(2) of the Act mandates that the AO must record his dissatisfaction, having regard to the accounts of the assessee company, that the claim of the assessee that no disallowance under section 14A of the Act is called for in its case is not to be accepted, before resorting to the prescribed method for computing the disallowance. However, we find that the disallowance in the present case has been computed mechanically at 1% of the annual average of investments without complying with the statutory requirement of recording of dissatisfaction by the AO as required per the mandate of section 14A(2) of the Act.

44. In the case before us, we find that the assessee company demonstrated that the investments yielding exempt income were long-term strategic investments made in the earlier years in subsidiary and associate cement companies as part of business expansion and consolidation, and in a government company to ensure an assured power supply. The AO has not brought any material on record to

establish that borrowed funds were utilised by the assessee company for making such investments in exempt income-yielding shares or that any specific administrative expenditure was incurred exclusively for earning the dividend income. Rather, the disallowance has been made based on presumptions and probabilities without identifying any actual expenditure incurred by the assessee company or recording cogent dissatisfaction based on the examination of its accounts. The AO has neither pointed out any defect in the accounts of the assessee company nor demonstrated any nexus between the expenditure incurred and the exempt income earned.

45. We find it is a matter of fact borne from the record that though the assessee company during the subject year was in receipt of exempt dividend income of Rs. 13.20 crores on its 13200000 nos. of shares of M/s Parasakti Cement Ltd., that were purchased in FY 2005-06, however, it had not attributed and therein disallowed any part of the expenditure for earning of the said exempt income. As is discernible from the record, it is the claim of the assessee company that as no expenditure was incurred with respect to the activity of making investments in shares, therefore, no disallowance was warranted u/s 14A of the Act. On the other hand, we find that the A.O., without recording his dissatisfaction as to why the claim of the assessee company that no expenditure could be attributed for the earning of the

exempt dividend income, based on its accounts before him, had mechanically worked out the disallowance as per the mechanism contemplated in Rule 8D of the Income-tax Rules, 1963. In our considered view, the AO has bypassed the statutory requirement of recording his dissatisfaction as to why the claim of the assessee company that no part of the expenditure pertaining to its business of manufacturing of cement and power generation could be attributed to the earning of the exempt dividend income was not to be accepted, having regard to its accounts, as placed before him. We find that the issue as to whether or not it is obligatory on the part of the A.O to record his dissatisfaction as to why the claim of the assessee in respect of the expenses incurred for earning of the exempt dividend income, if any, is not to be accepted is no more res integra and has been settled by the **Hon'ble Supreme Court** in the case of **Godrej & Boyce Mfg. Co. Ltd**. **Vs. Dy. CIT [2017] 81 taxmann.com 111 (SC).** The Hon'ble Apex Court in its aforesaid order had observed that it is obligatory on the part of the A.O. to record his dissatisfaction that, having regard to the accounts of the assessee, as placed before him, it was not possible to generate the reasonable satisfaction with regard to the correctness of the claim of the assessee. It was observed by the Hon'ble Apex Court that it was only after the A.O. had recorded his dissatisfaction as regards the correctness of the claim of the assessee that the provisions

of Sec.14A(2) and (3) r.w Rule 8D could be invoked. It was observed by the Hon'ble Apex Court, as under:

> "37. We do not see how in the aforesaid fact situation a different view could have been taken for the Assessment Year 2002-2003. Sub-sections (2) and (3) of Section 14A of the Act read with Rule SD of the Rules merely prescribe a formula for determination of expenditure incurred in relation to income which does not form part of the total income under the Act in a situation where the Assessing Officer is not satisfied with the claim of the assessee. Whether such determination is to be made on application of the formula prescribed under Rule 8D or in the best judgment of the Assessing Officer, what the law postulates is the requirement of a satisfaction in the Assessing Officer that having regard to the accounts of the assessee, as placed before him, it is not possible to generate the requisite satisfaction with regard to the correctness of the claim of the assessee. It is only thereafter that the provisions of Section 14A(2) and (3) read with Rule 8D of the Rules or a best judgment determination, as earlier prevailing, would become applicable."

Also, a similar view have been taken by the **Hon'ble Supreme Court** in the case of **Maxopp Investment Ltd. Vs. CIT [2018] 91 taxmann.com 154 (SC).** In the case before us, it is a matter of fact borne from the record that, though the A.O had based upon his presumptions and probabilities, recorded his general observations as to why disallowance was called for in the hands of the assessee company under Sec.14A r.w Rule 8D, but then, we are afraid that there is no whisper of any dissatisfaction on his part that having regard to the accounts of the assessee company, as were placed before him, it was not possible for him to generate the requisite satisfaction with regard to the correctness of the claim of the assessee company that no part of the expenditure claimed by it as a deduction could be attributed to earning of exempt

dividend income. In our view, in case the A.O was to reject the claim of the assessee company that no expenditure could be attributed to earning of the exempt dividend income, then, there was an innate statutory obligation cast upon him to have recorded the requisite dissatisfaction that having regard to the accounts of the assessee, as placed before him, it was not possible to generate the requisite satisfaction with regard to the correctness of the aforesaid claim of the assessee company. We are afraid that, as there is a clear lapse on the part of the AO in validly assuming jurisdiction for dislodging the claim of the assessee company that no disallowance under section 14A was called for in its hands, therefore, the disallowance of Rs. 1,10,11,500/- worked out by him under section 14A r.w. Rule 8D(2)(ii), on the said count itself cannot be sustained and is liable to be vacated. In fact, we find that the **Hon'ble High Court of Bombay** in **CIT Vs. Sociedaded De Fomento Industrial (P) Ltd. (2021) 123 taxmann.com 38 (Bombay)**, has held that the application of Section 14A and Rule 8D is not automatic in each and every case where there is income not forming part of total income and before its application, it needs to be justified as to how expenditure incurred by assessee during relevant year related to income not forming part of its total income. For the sake of clarity, we deem it apposite to cull out the observations of the Hon'ble High Court, as under:

> "19. Here, on facts, the Tribunal noted that the AO only discussed the provisions of section 14A(l) but has not justified how the expenditure the Assessee incurred during the relevant year related to the income not forming part of its total income. The AO, according to the Tribunal, straightaway applied Rule 8D. Indeed, there must be a proximate relationship between the expenditure and the tax-exempt income. Only then would a disallowance have to be effected. This Court, we may note, on more than one occasion, has held that the onus is on the Revenue to establish that there is a proximate relationship between the expenditure and the exempt income. That is, the application of section l4A and rule 8D is not automatic in each and every case, where there is income not forming part of the total income. No doubt, the expenditure under section 14A includes both direct and indirect expenditure, but that expenditure must have a proximate relationship with the exempted income. Surmise or conjecture is no answer.
>
> 20. We may further reiterate that before rejecting the disallowance computed by the Assessee, the Assessing Officer must give a clear finding with reference to the Assessee's accounts as to how the other expenditure claimed by the Assessee out of the non-exempt income is related to the exempt income.
>
> 21. So, we see no valid reasons to upset the Tribunal's well-reasoned judgment on this substantial question of law."

46. We, thus, in the backdrop of our aforesaid deliberations, are of the considered view, viz. (i). that as the assessee company had sufficient self-owned funds to source the investments in the exempt dividend income yielding shares, therefore, no disallowance of any part of the interest expenditure was called for in its case; and (ii). that while computing "average value of investment" for the purpose of Rule 8D(2)(ii), only the investment made by the assessee company in M/s Parasakti Cement Limited (supra), which have actually yielded exempt dividend income during the relevant previous year was to be considered. However, as the disallowance under Section 14A cannot be mechanically made by invoking Rule 8D in a routine or automatic

manner, we are of the view that, though the CIT(Appeals) has proceeded on an incorrect factual premise regarding absence of exempt income, but the disallowance under section 14A is even otherwise not sustainable on the ground that the AO has failed to record his dissatisfaction after considering the accounts of the assessee company, as placed before him, that it was not possible to generate the requisite satisfaction with regard to the correctness of the claim of the assessee company that no such disallowance was called for in its case. Accordingly, the order of the CIT(Appeals) vacating the disallowance made by the AO under section 14A of the Act is upheld, but based on our substituted reasoning. The **Grounds of appeal Nos. 1 and 2** of the revenue are dismissed.

47. We shall now deal with the claim of the revenue that the CIT(A) has erred in deleting the disallowance of Rs. 1,85,88,450/- made by the AO under section 80G in respect of CSR expenditure incurred by the assessee company.

48. Ostensibly, the AO had disallowed the claim for deduction under section 80G in respect of CSR expenditure incurred by the assessee company, on the ground that CSR expenditure is mandatory and hence donations made therefrom cannot be regarded as voluntary.

49. On appeal, the CIT(Appeals) had followed the binding jurisdictional precedent holding that, except for specific exclusions provided under section 80G(2)(iiihk) and (iiihl), there is no blanket prohibition in the Act against allowing deduction under section 80G merely because the donation also qualifies as CSR expenditure.

50. We find that as the facts and the issue pertaining to the disallowance of the claim of the assessee company for deduction under section 80G in respect of CSR expenditure remain the same as were there before us in the appeal filed by the revenue for the immediately preceding year, i.e., AY 2017-18 in ITA No. 1083/Hyd/2024, therefore, our order therein passed shall apply mutatis mutandis for the purpose of disposing of the subject issue during the year under consideration. Accordingly, the CIT(A) order vacating the disallowance of Rs. 1,85,88,450/- made by the AO under section 80G regarding CSR expenditure incurred by the assessee company is thus, on the same terms, upheld. The **Ground of appeal No. 3** raised by the revenue is dismissed.

51. We shall now deal with the grievance of the revenue that the CIT(A) has erred in law and facts of the case in deleting the disallowance of Rs. 16.31 crores made by the AO in connection with the deduction under section 80IA of the Act claimed by the assessee company.

52. During the course of assessment proceedings, the AO examined the claim of deduction under Chapter VI-A and also scrutinised the purchases and expenses claimed by the assessee company, particularly with reference to the cement division and the power generation division. The AO called for extensive details of purchases, major expenses, and supplier-wise information and further conducted third-party verifications by issuing notices under section 133(6) of the Act to various suppliers and transporters.

53. The AO observed that the assessee company had furnished voluminous data and, considering the magnitude of transactions, restricted the verification to sample months, namely April 2017, August 2017 and December 2017. On examination of the sample data and replies received from third parties, the AO noticed certain discrepancies and mismatches between the figures reflected in the books of the assessee company and the confirmations furnished by suppliers and transport contractors.

54. The AO recorded that in several cases, entities such as Andru Minerals, Sri Sri Subramanyeswara Transport, Simhapuri Transport Company and Pioneer Builders Limited had categorically stated that they were engaged only in transportation activity and had not supplied any raw material, whereas the assessee company had booked expenditure in their names under the heads of purchase of aluminium

laterite, gypsum phosphate and similar raw materials. According to the AO, this indicated that transportation costs were being included in the cost of raw material purchases.

55. The AO further observed that in certain cases where raw material suppliers admitted having supplied goods, the values reported by such suppliers did not tally with the amounts recorded by the assessee company. According to the AO, these discrepancies suggested that the assessee company had overstated the expenditure of the cement division and correspondingly understated the expenditure of the power generation division, thereby allegedly inflating the profits of the power unit eligible for deduction under section 80-IA.

56. On the basis of the above observations, the AO concluded that there was an element of manipulation of expenses between the cement division and the power division. However, the AO candidly recorded that, given the large volume of transactions, it was not possible to quantify the exact amount of such alleged manipulation. Consequently, adopting what was described as a “conservative approach”, the AO disallowed a sum equivalent to 1% of the total expenses of the cement division.

57. Ostensibly, the total expenses as per the profit and loss account were Rs. 1631.13 crores, and accordingly, an amount of Rs. 16.31

crores was disallowed by the AO and added to the total income of the assessee company. The said disallowance had the effect of reducing the deduction claimed by the assessee company under section 80-IA of the Act.

58. Aggrieved by the assessment order, the assessee company carried the matter in appeal before the CIT(Appeals). During the appellate proceedings, the assessee company specifically challenged the estimated disallowance of Rs. 16.31 crores, contending that the AO had resorted to an ad hoc disallowance without establishing any specific instance of bogus expenditure or diversion of profits.

59. As observed by us hereinabove, the assessee company furnished additional evidence before the CIT(Appeals), including plant-wise production and consumption details, coal utilisation reports and reconciliations, to demonstrate that coal consumption by the cement division was significantly higher than that of the power division and that the accounting treatment followed was in accordance with Ind AS–2, which mandates inclusion of transportation and handling charges in the cost of inventory.

60. The additional evidence was forwarded to the AO for “remand report”. In the remand proceedings, the AO reiterated the findings recorded in the assessment order and maintained that certain entities

were transporters whose services were wrongly classified under raw material purchases. However, the AO did not identify any specific item of expenditure as fictitious or non-genuine, nor did he quantify any precise amount of excess claim of expenditure that was actually attributable to the power generation unit.

61. After considering the submissions of the assessee company, the "remand report" of the AO and the material available on record, the CIT(Appeals) recorded a finding that the disallowance of Rs. 16.31 crores was purely on an estimate basis and founded on sample data. The CIT(Appeals) further observed that, except for coal purchases, all other expenses referred to by the AO pertained to the cement division, which was not eligible for deduction under section 80IA of the Act.

62. The CIT(Appeals) also took note of the fact that the assessee company maintained separate books of account for cement, power and WHR divisions, which were audited by the statutory auditors, and that Form No. 10CCB had been filed on the basis of such separate audited accounts. The CIT(Appeals) held that there must be something more than mere suspicion or conjecture to justify a disallowance affecting a statutory deduction.

63. The CIT(Appeals) placed reliance on the principle laid down by the Hon'ble Supreme Court in the case of CIT Vs. J.J Enterprises

(2002) 122 Taxman 124 (SC), wherein approving the decision of the lower authorities, it was held that additions based on pure guesswork and estimation, without concrete evidence, are unsustainable in law. It was held that even if any particular expenditure was found to be inflated or non-genuine, the same ought to have been disallowed specifically in the relevant division, instead of making a blanket percentage disallowance of total expenses.

64. Accordingly, the CIT(Appeals) concluded that the disallowance of Rs. 16.31 crores, being 1% of the total expenses of the cement division, was arbitrary and not supported by cogent material. The CIT(Appeals) thus deleted the addition and allowed the corresponding ground of appeal raised by the assessee company.

65. Before us, the learned Departmental Representative supported the assessment order and submitted that the AO had brought out systemic discrepancies in the booking of expenses and that estimation was warranted in the backdrop of the peculiar facts of the case.

66. Per contra, the learned Authorised Representative of the assessee company reiterated the submissions made before the lower authorities and contended that no specific defect or bogus claim had been established.

67. We have carefully considered the rival submissions, perused the orders of the lower authorities and examined the material placed on record. It is evident that the AO himself was unable to quantify the alleged inflation of expenses and resorted to a flat disallowance of 1% of total expenses purely on estimation. The law is well settled that estimation cannot substitute proof, particularly when the consequence is denial or reduction of a statutory deduction under section 80-IA. Our view is fortified by the judgment of the **Hon'ble Supreme Court** in **CIT Vs. J.J Enterprises (2002) 122 Taxman 124 (SC)**, wherein approving the decision of the lower authorities, it was held that additions based on pure guesswork and estimation, without concrete evidence, are unsustainable in law

68. We find merit in the reasoning adopted by the CIT(Appeals) that where separate books of account are maintained, duly audited, and no specific instance of false claim is identified, an ad hoc disallowance based on sample data cannot be sustained. The approach of the AO, in our considered view, amounts to making an addition on suspicion and conjecture, which is impermissible in law.

69. In view of the foregoing discussion, we find no infirmity in the order of the CIT(Appeals) in deleting the disallowance of Rs. 16.31 crores made on estimated basis. Accordingly, we find no infirmity in the view taken by the CIT(A), and affirm his order wherein the impugned

disallowance of Rs. 16.31 crore (supra) has been vacated by him. The **Ground of appeal No. 4** raised by the revenue is dismissed.

70. We shall now deal with the grievance of the revenue regarding the deletion of an addition of Rs. 1,24,717/- representing scrap sales and interest income treated by the AO as ineligible for deduction under section 80IA of the Act. The CIT(Appeals) had recorded a finding that the scrap sales of Rs.1,00,779/- arose directly from the power generation activity of the assessee company and interest income of Rs.23,938/- was earned on deposits linked to the procurement of coal for the eligible business.

71. We have given thoughtful consideration to the subject issue, i.e., as to whether or not the “scrap sales” and “interest income” received by the assessee company are eligible for deduction under section 80IA of the Act. We find that the CIT(A) had relied upon the order of this Tribunal in **Asst. Commissioner of Income-tax, Central Circle 2(1), Hyderabad Vs. Madhucon Projects Ltd., Hyderabad, ITA No. 722/Hyd/2020, dated 13/04/2022**, and had concluded that the income from “scrap sale” and incidental receipts was integrally connected with the eligible business of the assesseee and qualified for deduction under section 80IA of the Act. We find that the Revenue has not placed any material to demonstrate that the subject receipts of the assessee company were independent of the core business of its eligible

undertaking. Our aforesaid view that “scrap sales” to the extent connected with the core business of the assessee is eligible for deduction under section 80IA of the Act is supported by the order of the **Hon’ble High Court of Gujarat** in **CIT Vs. Nirma Ltd. (2015) 55 taxmann.com 125 (Guj)**, wherein it is held that income from the sale of various items of scrap is to be included for the purpose of calculation of deduction under section 80IA of the Act. The “Special Leave Petition” (SLP) filed against the aforesaid judgment of the Hon’ble High Court of Gujarat had been dismissed by the **Hon’ble Supreme Court** in **CIT Vs. Nirma Ltd. (2024) 162 taxmann.com 237 (SC).** We, thus, are of the view that as Section 80IA of the Act contemplates deduction of the profits that are “derived from” the eligible business of an assessee, therefore, as the income from the “scrap sales” have a direct nexus with the power generation process itself, and not with a separate, independent business activity of the assessee company before us, thus, the same in our view will be eligible for deduction under section 80IA of the Act.

72. Apropos the grievance of the revenue that the CIT(A) has erred in allowing claim of deduction under section 80IA of the Act on “interest income” of the assessee company on deposits made against Bank Guarantees for purchase of coal, we are of the view that the “interest income” on short-term deposits of money kept apart by the assessee

company for the purpose of business has to be treated as its income earned on business and cannot be treated as income from other sources, and thus, is eligible for deduction under section 80IA of the Act. Our view is supported by the judgment of the **Hon'ble High Court of Rajasthan** in **Chambal Fertilizers and Chemicals Ltd. VS. CIT (2018) 95 taxmann.com 313 (Raj)**. The "SLP" filed against the aforesaid order of the Hon'ble High Court had been dismissed by the Hon'ble Supreme Court in **CIT Vs. Chambal Fertilizers & Chemicals Ltd. (2018) 95 taxmann.com 314 (SC)**. We, thus, finding no perversity in the findings of the CIT(Appeals) on the aforesaid issues, uphold his order. The **Ground of appeal No. 5** raised by the revenue is dismissed.

73. The **Ground of appeal No. 6**, being general in nature, is dismissed as not pressed

74. Resultantly, the appeal filed by the Revenue in ITA No. 1084/Hyd/2024 for AY 2018-19 is dismissed.

75. In the result, both the appeals filed by the revenue in ITA No. 1083/Hyd/2024 for AY 2017-18 and ITA No. 1084/Hyd/2024 for AY 2018-19 are dismissed.

Order pronounced in the open court on 21/01/2026.

Sd/- **(MANJUNATHA G.)** **ACCOUNTANT MEMBER**	**Sd/-** **(RAVISH SOOD)** **JUDICIAL MEMBER**

Hyderabad, dated 21/01/2016
***OKK/sps*

आदेशकीप्रतिलिपिअग्रेषित/ **Copy of the order forwarded to:-**

1.	निर्धारिती/The Assessee	:	Penna Cement Industries Limited, 705, Lakshmi Nivas, Banjara Hills, Road No.3, Hyderabad, Telangana-500034.
2.	राजस्व/ The Revenue	:	Assistant Commissioner of Income Tax, Circle-5(1), Room No.224, 2B, IT Towers, Masab Tank, Hyderabad.
3.	The Principal Commissioner of Income Tax, Hyderabad.		
4.	विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण /DR,ITAT, Hyderabad.		
5.	The Commissioner of Income Tax		
6.	गार्डफ़ाईल / Guard file		

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Hyderabad.