**IN THE INCOME TAX APPELLATE TRIBUNAL**
**RAIPUR BENCH, RAIPUR**
**BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER**
**AND**
**MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No.365/RPR/2014**
**Assessment Year : 2011-12**

| DCIT- 1(2),<br>Raipur (CG). | **Vs.** | Godawari Power & Ispat Ltd.,<br>Plot No.482/2, Industrial Growth Centre, Phase- 1, Siltara,<br>Raipur (CG). |
|---|---|---|
| | | **PAN : AAACI7189K** |
| **(Appellant)** | | **(Respondent)** |

**C.O. No.12/RPR/2018**
**(In ITA No.365/RPR/2014)**
**Assessment Year : 2011-12**

| Godawari Power & Ispat Ltd.,<br>Plot No.482/2, Industrial Growth Centre, Phase- 1, Siltara,<br>Raipur (CG). | **Vs.** | DCIT- 1(2),<br>Raipur (CG). |
|---|---|---|
| **PAN : AAACI7189K** | | |
| **(Appellant)** | | **(Respondent)** |

Department by : Shri P. K. Mishra, CIT(DR)
Assessee by : Shri R. B. Doshi, CA

Date of hearing : 16-08-2018
Date of pronouncement : 01-10-2018

**O R D E R**

**PER R. K. PANDA, AM :**

This appeal filed by the Revenue is directed against the order dated 25.09.2014 of the ld. CIT(A), Raipur (CG) relating to assessment year 2011-12. The assessee has filed the Cross Objection against the appeal filed by

the Revenue. For the sake of convenience, these were heard together and are being disposed of by this common order.

**ITA No.365/RPR/2014 (By Revenue) :**

2. Facts of the case, in brief, are that the assessee is a company and is engaged in manufacture and sale of Structural Pellet, Sponge Iron, Steel Billets, Ferro Alloys, Wire Rod, H.B. Wire and Mining & Crushing of Iron Ore. It is also engaged in generation and sale of power. The assessee filed its return of income on 27.09.2011 declaring total income of Rs.26,63,65,921/- which included long term capital gain of Rs.9,88,867/-. The gross total income was shown at Rs.46,54,65,157/- from which deduction u/s 80-IA of the I.T. Act, 1961 of Rs.19,90,99,326/- was claimed and the total income was worked out at Rs.26,63,65,921/-. Book profit for MAT purposes was shown at Rs.88,39,67,803/- on which the tax liability worked out to be Rs.17,61,79,203/- which was more than the tax payable under the normal provisions of the I.T. Act. The case was selected for scrutiny through CASS and the first notice u/s 143(2) dated 07.08.2012 was issued by Assessing Officer and duly served on the assessee through Registered Post on 13.08.2012. Subsequently, a revised return was filed by the assessee on 30.03.2013 declaring total income of Rs.12,10,79,996/- which included long term capital gain of Rs.9,88,867/-. The gross total income was shown at Rs.46,54,65,157/- from which deduction u/s

80-IA of Rs.34,43,85,162/- was claimed and the total income was worked out at Rs.12,10,79,996/-. Book profit for MAT purposes was shown at Rs.88,39,67,803/- on which the tax liability worked out to be Rs.17,61,79,203/- which was more than the tax payable under the normal provisions of the I.T. Act.

3. The Assessing Officer completed the assessment u/s 143(3) vide order dated 19.02.2014 determining the total income of Rs.50,90,06,690/- by making the following additions :-

| | | | *Amount [Rs.]* | *Amount [Rs.]* |
|---|---|---|---|---|
| *1.* | *Income chargeable under the head business and profession, as per the revised return* | *:* | *49,02,98,644* | |
| *Add:* | *Disallowance of CSR expenses* | *:* | *1,91,79,611* | |
| | *Disallowance of Charity / donation expenses* | | *10,13,489* | |
| | *Disallowance of Pooja & Festival expenses* | | *5,94,487* | |
| | *Disallowance u/s 14A of the I.T. Act* | | *2,25,43,398* | |
| | *Delayed payment of Employees' contribution to the Provident Fund/ ESI* | | *2,10,551* | |
| | *Income chargeable under the head business and profession* | *:* | | *53,38,40,180* |
| *2.* | *Long term capital gain, as per the revised return* | | *9,88,867* | |
| | *Short term capital gain, as per the revised return* | | *16,13,756* | |
| | *Income chargeable under the head Capital gains* | | | *26,02,623* |
| *3.* | *Gross Total Income* | | | *53,64,42,803* |
| *Less:* | *Set-off of unabsorbed depreciation R.R. Ispat- A.Y. 2010-11 as per the revised return* | | *2,53,85,466* | |
| | *Set-off of unabsorbed depreciation Iron Ore crushing Div – A.Y. 2009-10 as per the revised return* | | *20,50,644* | *2,74,36,110* |
| *Less:* | *Deduction u/s 80IA* | | *0* | *0* |
| *4.* | *Total Income* | | | *50,90,06,693* |
| *5.* | *Total Income [rounded off]* | | | *50,90,06,690* |

4. The assessee filed appeal before the ld. CIT(A), who gave part relief to the assessee.

5. Aggrieved with such order of the ld. CIT(A), the Revenue is in appeal before the Tribunal. The assessee has filed Cross Objection before the Tribunal. The grounds raised by the Revenue and the assessee are as under:-

***ITA No.365/RPR/2014 (Revenue) :***

*"a. Whether in law and on facts & circumstances of the case, for the purpose of calculation of deduction u/s.80IA of the I.Tax Act, 1961 the ld. CIT(A) has erred in*

*i) Not allowing set off of losses of one eligible unit from profit of another eligible unit.*

*ii) Not agreeing with the Assessing Officer who has held that the value of power sufficient to its own unit for captive consumption has been over stated.*

*iii) Not agreeing with the A.O. that sale proceeds of carbon credit is not income derived from business of power generations and there by deleting disallowance of Rs.37,56,76,933/- out of deduction claimed u/s 80IA of the I.T. Act, 1961.*

*b. Whether in law and on facts & circumstances of the case, the learned CIT(A) has erred in deleting the disallowance of Rs.1,91,79,611/- on account of CSR expenses which have not been laid out wholly and exclusively for the purpose of business?*

*c. Whether in law and on facts & circumstances of the case, the learned CIT(A) has erred in restricting the addition to Rs.12,57,976/- out of disallowance made by the A.O. on account of charity/Pooja and Festival expenses their by giving relief of Rs.3,50,000/-?*

*d. Whether in law and on facts & circumstances of the case, the learned CIT(A) has erred in deleting the disallowance of Rs.2,25,43,398/- u/s 14A of the IT Act, 1961?*

*e. Whether in law and on facts and circumstances of the case, the learned CIT(A) has erred in deleting the addition of Rs.2,10,551/- made by the A.O. on account of delayed payment of employees contribution to PF and ESI which were deemed as income U/s 2(24)(x) of IT Act, 1961 read with section 36(1)(va) of IT Act, 1961?*

*f. The order of the Ld. CIT(A) is erroneous both in law and on facts?*

*g. Any other ground that may be adduced at the time of hearing?"*

***C.O. No.12/RPR/2018 (Assessee) :***

*"On the facts and in the circumstances of the case, receipt of Rs.67,18,544/- on account of carbon credit is a capital receipt in view of judgment of Hon'ble Jurisdictional ITAT in ACIT vs. Shree Nakoda Ispat Ltd. – I.T.A. No.109/BLPR/2011,*

> *and therefore, not liable to tax. The A.O. has erred in holding it and thereby taxing it as revenue receipt."*

6. So far as ground of appeal no.(a)(i) by Revenue is concerned, the facts of the case, in brief, are that the Assessing Officer, in the assessment order relying on the provisions of section 80-IA and the decision of the Hon'ble Supreme Court in the case of Liberty India vs. CIT reported in 317 ITR 218 and various other decisions, held that the loss of an eligible industrial unit is required to be set off against profit of other eligible industrial unit since the deduction u/s 80-IA(1) is allowed to the profit and gains derived from "business" referred to in section 80-IA and not to the undertaking.

7. Before the ld. CIT(A), the assessee submitted that the deduction u/s 80-IA has been claimed in respect of its units (Unit-1 & Unit-2) separately which are generating power. It was submitted that the 'profit and gains of an undertaking' shall be computed as if such undertaking was the only source of income of the assessee during the previous year relevant to the initial assessment year and to every subsequent assessment years up to and including the impugned assessment year for which the determination of deduction is to be made and, therefore, each undertaking has to be treated as a separate source of income. Hence, the loss of one eligible undertaking cannot be set off against the profits of another eligible undertaking and also against non-eligible

undertaking. The decision of the Ahmedabad Special Bench of the Tribunal in the case of Goldmine Shares and Finance (P) Ltd. reported in 302 ITR 208 and the various other decisions were brought to the notice of the ld. CIT(A).

8. Based on the arguments advanced by the assessee, the ld. CIT(A) held that the Assessing Officer is not justified in making the adjustment of profit of eligible undertaking with losses of other eligible undertaking by observing as under :-

> *"5. I have carefully gone through the assessment order and submissions of the appellant. The A.O. has relied on the decision of Liberty India vs. CIT (2009) 183 Taxman 349 (SC) and stated that the provision of section 80-IA(5) of the Act is applicable to the profit from the eligible business as a whole and the eligible undertaking has not to be seen on a standalone basis of non-eligible business. However, I am in agreement with the submissions of the appellant that on a conjoint reading of sub-sections (1), (4) and (5) of section 80-IA of the Act, it is clear that the deduction under section 80-IA of the Act shall be allowed to an undertaking, which is engaged in the eligible business and the aforesaid deduction shall be computed as if the eligible business of the undertaking is the only source of income of the assessee.*
> *5.2 The appellant has elaborately differentiated in the submission the following judicial pronouncements relied upon by the A.O. CIT vs. Him Teknoforge Ltd. (2013) 256 CTR 393 (HP-HC); IPCA Laboratory Ltd. vs. DCIT (2004) 266 ITR 521 (SC); ITO vs. Induflex Products (P) Ltd. (2006) 280 ITR 1 (SC); A.M. Moosa vs. CIT (2007) 294 ITR 1 (SC) CIT vs. Shirke Construction Equipments Ltd. (2007) 291 ITR 380 (SC) and Synco Industries Ltd. vs. Assessing Officer & ANR (2008) 299 ITR 444 (SC).*
> *5.3 In view of the above, I am of the considered opinion that the A.O. has erred in netting off the profits & losses of two eligible units and allowing the deduction thereon, in spite of the fact that the deduction under section 80-IA of the Act is available to the each of the undertaking, considering the same as the only source of income as per section 80-IA(5) of the Act. Accordingly, the adjustment of profits is eligible undertaking with losses of other eligible undertaking made by the A.O. is deleted."*

9. Aggrieved with such order of the ld. CIT(A), the Revenue is in appeal before the Tribunal.

10. The ld. DR heavily relied on the order of the Assessing Officer.

11. The ld. counsel for the assessee on the other hand relied on the decision of the Bangalore Bench of the Tribunal in the case of Jindal Aluminium Ltd. vs. ACIT reported in 54 SOT 283, decision of the Mumbai Bench of the Tribunal in the case of Meera Cotton & Synthetic Mills (P) Ltd. vs. ACIT reported in 29 SOT 177 and the decision of the Delhi Bench of the Tribunal in the case of CIT vs. Sona Koyo Steering Systems Ltd. reported in 321 ITR 463. Referring to the above decisions, he submitted that while computing the deduction u/s 80-IA loss of one eligible unit is not to be set off or adjusted against the profit of another eligible unit.

12. So far as various decisions relied on by the Assessing Officer are concerned, he submitted that all these decisions are either distinguishable or not application to the facts of the present case.

13. We have considered the rival arguments made by both the sides and perused the orders of the authorities below. We find the Assessing Officer in the instant case while computing the deduction u/s 80-IA held that the loss of the eligible industrial unit is required to be set off against the profit of other eligible industrial unit. We find the ld. CIT(A) rejected the finding of the Assessing Officer by holding that the Assessing Officer is not justified in netting off of the profit and losses of the two eligible units and allowing

deduction thereon. The relevant finding of the ld. CIT(A) has already been reproduced in the preceding paragraph. It has been held in various decisions that while computing the deduction u/s 80-IA, loss of one eligible unit is not to be set off or adjusted against the profit of another eligible unit. Since the order of the ld. CIT(A) is in consonance with the law laid down by various High Courts and various Benches of the Tribunal, therefore, we find no infirmity in the order of the ld. CIT(A). Accordingly, the same is upheld and the ground raised by the Revenue on this issue is dismissed.

14. So far as ground of appeal no.(a)(ii) is concerned, the facts of the case, in brief, are that the power generating eligible units of the assessee company namely, the Unit-1 & Unit-2 sell the electricity to outside parties as well as transfer the electricity to their other divisions for captive consumption. From the various details furnished by the assessee, the Assessing Officer observed that the assessee has shown profit at the rate of 58.9% of Unit-1 and 45.7% in Unit-2 on which deduction u/s 80-IA has been computed. He observed that if the results of the Unit-1 & Unit-2 are compared with that of the Government owned PSUs, it will be found that such high net profit is not prevalent in this line of business. He, therefore, came to the conclusion that the consideration recorded in the books of account by the assessee company for the transfer of goods (electricity) from the eligible units to its other divisions does not

correspond to the market value of such goods (electricity) as on the date of the transfer. He, therefore, confronted the same to the assessee. Rejecting the various explanations given by the assessee and relying on various decisions, the Assessing Officer held that the market value for sale of electricity by a private generating unit based in Chhattisgarh (including the eligible units of the assessee company) for assessment year 2011-12 is Rs.2.84 per unit which is the average purchase rate of CSPDCL, which is also based in Chhattisgarh. The Assessing Officer accordingly disallowed the deduction claimed u/s 80-IA by holding that value of power supplied to its own unit for captive consumption at Rs.4.28 per unit has been overstated. He accordingly reduced the deduction claim u/s 80-IA of the I.T. Act.

15. In appeal, the ld. CIT(A) allowed the claim of the assessee by observing as under :-

> *"7. I have carefully gone through the assessment order and submissions of the appellant. It is seen that the appellant set up the Captive Power Plants for meeting the requirement of electricity of steel and other division (being non-eligible units). The electricity generated by the Captive Power Plant is, therefore, a substitute for the electricity which the Steel Division would have procured from the CSPDCL (State Electricity Company). Thus, looked at from the stand point of Steel Division it can be said that the Steel Division receives electricity at the same price as it pays to the CSPDCL to achieve its business plans. Therefore, the price that the Steel Division would otherwise have paid to the CSPDCL, would be the price that it would be willing to pay to the captive power plant and the same should be considered as the transfer price from the eligible unit to the Steel Division. The above contextual interpretation is further reinforced if one considers the fact that when the captive power generators such as the appellant supply surplus electricity to the CSPDCL, it cannot be ignored that CSPDCL purchases such power as trader / distributor of electricity. It is imperative to appreciate the different capacity and role played by CSPDCL while buying and selling electricity, for the purposes of giving a correct contextual meaning to the term "market value" appearing in section 80- IA of the Act.*

*When the captive power plant directly transfers electricity to the Steel Division and other division, the captive power plant is doing so as a generator and distributor and not as a simple generator of electricity. Hence, it is clear that the market value for the transaction of sale of power from the captive power plant to the Steel Division shall be sale price of CSPDCL to the Steel Division. Further, the appellant in its submission has also relied on various judicial decisions wherein it is stated that the rate at which power was sold by State Electricity Boards should be considered as the market value for the purpose of section 80-IA(8) of the Act.*
*7.2 Further, in the appellant's own case on identical facts in the AYs 2004-05 to 2006-07 such claim was also accepted by the Hon'ble High Court of Chhattisgarh. In the case of the appellant (Tax Case No.32 of 2012) the Hon'ble High Court has held that:-*
*"The market value of the power supplied to the Steel Division should be computed considering the rate of power to a consumer in the open market and it should not be compared with the rate of power when it is sold to a supplier as this is not the rate for which the consumer or the Steel Division could have purchased power in the open market. The rate of power to a supplier is not the market rate to a consumer in the open market.*
*In our opinion, the AO committed an illegality in computing the market value by taking into account the rate charged to a supplier; it should have been compared with the market value of power supplied to a consumer.*
*It is admitted by the department that in Chhattisgarh the power was supplied to the industrial consumers at the rate of R3.20/- per unit for the A.Y. 2004-05 and R 3.75/- per unit for the AY's 2005-06 and 2006-07. It was this rate that was to be considered while computing the market value of the power.*
*The CIT-A and the Tribunal had rightly computed the market value of the power after considering it with the rate of power available in the open market namely the price charged by the Board. There is no illegality in their orders".*
*7.3 Looking to the facts and circumstances of the case as also decision of the Hon'ble Jurisdictional High Court cited supra, the AO is directed to re-compute the eligible profits by applying the market value of power at the rate of sale to Steel Division by the State Electricity Company. Thus, this ground of appeal is allowed."*

16. Aggrieved with such order of the ld. CIT(A), the Revenue is in appeal before the Tribunal.

17. We have considered the rival arguments made by both the sides and perused the material available on record. We find the Hon'ble Chhattisgarh High Court in assessee's own case for assessment years 2004-05 to 2006-07 has decided identical issue in favour of the assessee by observing as under :-

*"22. The Assessee had sold power to the Steel-Division at the rate of Rs.3.30/- per unit for AY 2004-05 and Rs.3.75/- per unit for AYs 2005-06 and 2006-07.*
*23. The AO computed the market value of power under section 80-IA (8) read with its proviso and the explanation. He considered the rate charged by the Chhattisgarh Electricity Company Limited, Raipur (the Chhattisgarh-Company) for supply of electricity to the Board and held the market value of the power to be Rs.2.25/- per unit for the AY 2004-05 and 2005-06; and Rs.2.32/- per unit for the AY 2006-07.*
*24. The market value computed by the AO was less than the value claimed by the Assessee, he (the AO) dis-allowed the difference and added it in the income of the Assessee.*
*25. In Chhattisgarh, a consumer can utilise the power produce by its own captive power generating unit or it can buy power from the Board. No other entity can supply power to any consumer in the State: a consumer cannot purchase electricity from any other person.*
*26. The Board was charging @ Rs.3.30/- per unit in the AY 2004-05 and @ Rs.3.75/- per unit in the AYs 2005-06 and 2006-07 from industrial units. The CPP of the Assessee also charged the same amount from its Steel Division. As both were same, the CIT-A held this is to be the market value. The Tribunal has upheld this finding.*
*27. The counsel for the Department submits that:*

- *The Chhattisgarh-Company is situate in the same area and the price for which it sold power to the Board was relevant;*
- *The AO rightly compared it for calculating the market value of the power supplied to the Steel-Division;*
- *The rate charged by the Board cannot be taken into account as it includes wheeling and transmission charges.*

*28. The Chhattisgarh-Company is a company which is generating power. It is neither consumer of the electricity, nor it is supplying power to a consumer. It also cannot sell power to any consumer directly: it has to compulsorily sell it to the Board.*
*29. The power sold by the Chhattisgarh-Company to the Board is a sale to a company which itself supplies power to the consumers. It is not sale of power to the consumer.*
*30. The Steel-Division of the Assessee is a consumer. The CPP of the Assessee supplies electricity to the Steel-Division. Had the Steel-Division not taken power from the CPP then it had to purchase power from the Board. The CPP has charged the same rate from the Steel-Division that the Steel-Division had to pay to the Board if the power was purchased from the Board.*
*31. The market value of the power supplied to the Steel-Division should be computed considering the rate of power to a consumer in the open market and it should not be compared with the rate of power when it is sold to a supplier as this is not the rate for which a consumer or the Steel Division could have purchased power in the open market. The rate of power to a supplier is not the market rate to a consumer in the open market.*
*32. In our opinion, the AO committed an illegality in computing the market value by taking into account the rate charged to a supplier: it should have been compared with the market value of power supplied to a consumer.*

> *33. It is admitted by the Department that in Chhattisgarh the power was supplied to the industrial consumers at the rate of Rs.3.20/- per unit for the AY 2004-05 and Rs.3.75/- per unit for the AYs 2005-06 and 2006-07. It was this rate that was to be considered while computing the market value of the power.*
> *34. The CIT-A and the Tribunal had rightly computed the market value of the power after considering it with the rate of power available in the open market namely the price charged by the Board. There is no illegality in their orders.*
> *35. In view of above, the question is decided against the Department and in favour of the Assessee. The tax appeals have no merit. They are dismissed."*

18. We find the Raipur Bench of the Tribunal in the case of DCIT vs. Hira Ferro Alloys Ltd. vide ITA No.358 to 360/RPR/2014 order dated 18.01.2018 for assessment years 2009-10, 2010-11 and 2012-12 has also decided identical issue by upholding the decision of the ld. CIT(A) wherein the ld. CIT(A) has deleted the disallowance made by the Assessing Officer u/s 80-IA by holding that the assessee has not overstated the price of power supplied to its divisions. Further, we find the Assessing Officer in subsequent assessment years i.e. for assessment years 2009-10, 2010-11 and 2012-13 has not made any such disallowance u/s 80-IA on account of power tariff charged to other units of the assessee. Under these circumstances, we do not find any infirmity in the order of the ld. CIT(A) on this issue. The ground raised by the Revenue is accordingly dismissed.

19. Ground of appeal no.(a)(iii) relates to the taxability of the carbon credits.

20. Facts of the case, in brief, are that the Assessing Officer during the course of assessment proceedings observed that the assessee company has shown

receipt of Rs.0.67 crores on account of carbon credit. On being questioned by the Assessing Officer, it was submitted that an amount of Rs.67,18,544/- has received on account of carbon credit has rightly been credited as income of power unit-1. It was submitted that the ld. CIT(A) has allowed similar claim for the purpose of deduction u/s 80-IA for assessment year 2008-09 in assessee's own case. Without prejudice to the above, it was alternatively argued that the Hyderabad Bench of the Tribunal in the case of My Home Power Ltd. vs. DCIT (2012) has decided the issue of carbon credit entitlement in favour of the assessee and held the sale of carbon credit certificates as capital receipt not chargeable to tax. It was accordingly argued that the amount of Rs.67,18,544/- received during the year on sale of carbon credit is not at all taxable. The assessee also stated that it has incurred an expenditure of Rs.31,23,279/- which has been debited under the head "CDM Expenses" and shown as Operating Expenses. Thus, the net receipt of carbon credit is Rs.35,95,265/- during the year.

21. However, the Assessing Officer was not satisfied with the arguments advanced by the assessee and held that the income from sale of carbon credit being income received from a source beyond the first degree does not constitute profit and gains derived by the eligible undertaking or enterprise from any

business referred to in sub-section (4) of section 80-IA of the I.T. Act. Further, he held that the receipt of such carbon credit is taxable as revenue receipt.

22. Before the ld. CIT(A), the assessee submitted that during financial year 2010-11, the assessee company has received Verified Emission Reduction Credit (‘VER Credit’) of Rs.67,18,544/-. The aforesaid sum received from the sale of VER Credit forms part of eligible unit- 1 of the assessee and the same has been included after deducting the expenses of Rs.31,23,279/- as eligible profit of unit- 1 for the claim of deduction u/s 80-IA of the Act. It was submitted that the assessee company has earned the VER Credit (hereinafter referred to as “Carbon Credit”) from the installation of the Waste Heat Recovery Boiler (‘WHRB’) in eligible unit- 1 for use in the generation of Power. The assessee is engaged in the production of the sponge iron through rotary kiln. The fuel gases from the sponge iron kiln constitute a tremendous amount of waste heat energy which is absorbed by the WHRB to an extent of 75%. The fuel gases are utilized to produce steam and the steam is utilized to generate electricity. Accordingly, it was argued that the VER Credit received by the assessee pertains to the power generating unit (Unit- 1) of the company.

23. Relying on various decisions, it was argued that such carbon credit accrues in the hands of the company in the course of generation of power itself and it satisfies the criteria of the first degree nexus as laid down by the Apex

Court in Liberty India (supra). The various decisions relied on by the Assessing Officer were distinguished.

24. Based on the argument advanced by the assessee, the ld. CIT(A) held that the carbon credit could be earned if power is generated and not otherwise and, therefore, gain from sale of carbon credit is a gain derived from the business of generation of power and consequently, eligible for deduction u/s 80-IA(4) of the I.T. Act. Relying on various decisions including the decision of the Hon'ble Madras High Court in the case of Fenner (India) Ltd. vs. CIT reported in 241 ITR 803, decision of the Hon'ble Supreme Court in the case of B. Desraj vs. CIT reported in 301 ITR 439, he allowed the ground raised by the assessee before him.

25. Aggrieved with such order of the ld. CIT(A), the Revenue is in appeal before the Tribunal.

26. The ld. DR heavily relied on the order of the Assessing Officer.

27. The ld. counsel for the assessee on the other hand filed an application under Rule 27 of the Income Tax (Appellate Tribunal) Rules, 1963 and submitted that the issue relating to the taxability of receipts on account of carbon credit was a highly contentious issue and the law relating to the same has been settled in favour of assessee by the decision of the Hon'ble Andhra Pradesh High Court in the case of CIT vs. My Home Power Ltd. reported in 365

ITR 82. Following such decision, the issue has been settled in favour of the assessee by jurisdictional Tribunal in the case of Shree Nakoda Ispat Ltd. in ITA No.109/BLPR/2011. Subsequently, an amendment has also been brought by enacting section 115BBG by Finance Act, 2017 providing that w.e.f. 01.04.2018 the receipts from sale of carbon credits would be taxable @ 10%. Thus, by this amendment, the uncertainty prevailing in taxation of receipts from carbon credits has been settled. The above amendment is prospective and therefore as a necessary corollary such receipt prior to the amendment are not taxable and are capital in nature.

28. After hearing both the sides, the ground raised by the assessee under Rule 29. of the Income Tax (Appellate Tribunal) Rules, 1963 is admitted for adjudication. Since this ground was neither raised before the Assessing Officer nor before the ld. CIT(A) for which there is no adjudication, therefore, considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore this issue to the file of the Assessing Officer with a direction to adjudicate the issue afresh. While doing so, he shall give due opportunity of being heard to the assessee and decide the issue as per fact and law. We hold and direct accordingly. The ground raised by the assessee is allowed for statistical purposes.

30. Ground of appeal no.(b) by the Revenue relates to the deletion of disallowance of Rs.1,91,79,611/- on account of CSR expenses.

31. Facts of the case, in brief, are that during the course of assessment proceedings the Assessing Officer observed that the assessee has incurred an amount of Rs.1,91,79,611/- on account of Corporate Social Responsibility (CSR), the details of which are as under :-

| *S.No.* | *Unit* | *Amount in Rs.* |
|---|---|---|
| *1* | *CPIL-Siltara* | *1,19,34,381* |
| | *GPIL-RR Ispat* | *11,45,230* |
| | *GPIL-IOCD* | *61,00,000* |
| | *Total* | *1,91,79,611* |

32. He observed that such expenses are regularly being disallowed in the assessment proceedings in earlier years. Further, the payment of Rs.1,19,34,381/- relating to GPIL-Siltara includes payments of Yagyashala, Drinking water hut, purchase of PC for Rajnandgaon Collectorate, donation to NGO, expenses for eye camp, donation/ expenses for Gram Panchayat, payment for supply of drinking water payment to Gram Vikas Samiti, development of village pond, beautification of pond and expenses of similar nature. On perusal of the Ledger Account, he observed that the sum of Rs.11,45,230/- relating to GPIL-RR Ispat includes payments relating to construction expenses for similar work. Similarly, on perusal of Ledger Account, he observed that out of Rs.61,00,000/- relating to GPIL-IOCD, a sum of Rs.55,00,000/- represents

donation to Akasnsha Lion School for physically handicapped and Rs.6,00,000/- represents donation to ISKCON. Relying on various decisions, he observed that the above expenses were incurred by the assessee company without any legal obligation and purely as an act of good citizenship and, therefore, it cannot be said to have been laid out wholly and exclusively for the purpose of its business. He accordingly disallowed a sum of Rs.1,91,79,611/- debited to the Profit & Loss Account.

33. In appeal, the ld. CIT(A) relying on various decisions deleted the addition. While doing so, he observed that the genuineness of the claim of expenditure i.e. incurrence of expenditure and payment thereof has not been doubted. Further, the Finance Act, 2014 brought an amendment in section 37 and the legislature intended to put an embargo on the admissibility of expenses and to achieve the purpose, therefore, there was no such embargo for the preceding years.

34. Aggrieved with such order of the ld. CIT(A), the Revenue is in appeal before the Tribunal.

35. After hearing both the sides, we find identical issue had come up before the Tribunal in assessee's own case for assessment year 2009-10 and 2010-11. We find the Tribunal vide ITA Nos.358 to 360/RPR/2014 order dated

18.01.2018 has decided the issue at para 47 of the said order by observing as under :-

> *"47. We have heard ld. D.R. and perused the record of the case. We find that the CIT(A) has relied on the decision in the case of Modi Industries (supra) and Hon'ble Karnataka High Court in the case of CIT vs. Infosys Technologies Ltd. (supra), wherein, it has been held that the expenditure incurred on social responsibility was laid out or expended wholly and exclusively for purposes of business. The CIT(A) has referred to the amendment made in Finance Act (No.2) 2014 w.e.f. 1.4.2015 in Section 37, wherein, it is declared that for the purposes of sub-section (1) any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession. The CIT(A) has held that there was no such embargo for the preceding years. In view of the above, the CIT(A) held that the disallowance cannot be sustained. In the instant case, it is submitted that CSR expenses are incurred for the welfare of local community and thereby improve corporate image of the companies incurring such expenditure. We are of the considered opinion that the CIT(A) has rightly considered the decision and deleted the addition made by the Assessing Officer and Ground No.1 of appeal of the revenue is dismissed."*

36. Respectfully following the decision of the Tribunal in assessee's own case and in absence of any contrary material brought to our notice, the order of the ld. CIT(A) is upheld on this issue. The ground raised by the Revenue is accordingly dismissed.

37. Ground no.(c) by the Revenue relates to order of the ld. CIT(A) in restricting the addition to Rs.12,57,976/- on account of charity/pooja and festival expenses to Rs.3,50,000/-.

38. Facts of the case, in brief, are that the Assessing Officer, during the course of assessment proceedings, observed that the assessee has debited an amount of Rs.5,94,487/- on account of Pooja & Festival expenses in respect of

GPIL-Siltara – Rs.513184/-, GPIL-RR Ispat – Rs.65,130/- and GPIL-IOCD – Rs.16,175/-. He observed that such expenses are regularly being disallowed by the Assessing Officer. Relying on the decision of the Hon'ble Jurisdictional High Court in the case of Hira Ferro Alloys Ltd. reported in 227 CTR 508 (which is a sister concern of the assessee) wherein it has been held that the expenditure incurred on Pooja/Vishwakarma Pooja by a company cannot be treated as expenditure incurred wholly and exclusively for purposes of business or profession of a company, he disallowed the entire sum of Rs.5,94,487/-. Similarly he noted that the assessee has debited an amount of Rs.10,13,489/- on account of charity and donation. Since such type of expenses are regularly being disallowed in the assessment proceedings in earlier years, he asked the assessee to substantiate the claim. From the details submitted by the assessee, he observed that these expenses are in nature of :-

- *payments of Bastar Rajmistri Kalyan Singh, Chhattisgarh Kisaan Sangh,*
- *donation for Navratri, Engineers day celebration, Janmashtamai,*
- *donation to Rotary club, Nav Durga Samiti, Shiv Sena, Durgotsava Samiti, Corporation Bank, Sangit Samiti,*
- *donation to Chhattisgarh Cricket Association (Rs.5,00,000/-),*
- *donation to World Renewal Spiritual Trust (Rs.51,000/-).*

39. Rejecting the various explanations given by the assessee, he disallowed the entire sum of Rs.10,13,489/- on the ground that the same has not been incurred wholly and exclusively for the purpose of business.

40. In appeal, the ld. CIT(A) restricted such disallowance to Rs.12,87,978/- and allowed relief of Rs.3,50,000/-. While doing so, he observed that except Rs.3,50,000/- incurred towards purchase and distribution of sweets, the balance amount does not relate to the business.

41. Aggrieved with such order of the ld. CIT(A), the Revenue is in appeal before the Tribunal.

42. We have considered the rival arguments made by both the sides and perused the material available on record. We find identical issue had come up before the Tribunal in assessee's own case wherein the Tribunal, considering the CBDT Circular No.17(F.No.27(2)-IT/43) dated 06.05.1983 and another CBDT Circular No.13A/20/68-IT(A-II) dated 03.10.1968 wherein it has been held that the expenses incurred on the occasion of Deepawali and Mahurat are in the nature of business expenditure had allowed and granted relief to Rs.6,54,900/-. Since in the instant case such relief granted by ld. CIT(A) is only Rs.3,50,000/- towards purchase and distribution of sweets, therefore, following the order of the Tribunal in assessee's own case for the preceding assessment years 2009-10 and 2010-11 respectively, we do not find any infirmity in the order of the ld. CIT(A). Accordingly, the same is upheld and the ground raised by the Revenue is dismissed.

43. In ground of appeal no.(d), the Revenue has challenged the disallowance of Rs.2,25,43,398/- made by the Assessing Officer u/s 14A of the I.T. Act.

44. Facts of the case, in brief, are that the Assessing Officer, during the course of assessment proceedings, observed that the disallowance of Rs.4,57,029/- was made u/s 14A in assessment year 2008-09 which was confirmed by the ld. CIT(A). Similarly, in assessment year 2010-11 an amount of Rs.2,03,73,385/- was disallowed u/s 14A of the I.T. Act. He, therefore, asked the assessee to explain as to why the provisions of section 14A should not be applicable in this year also since the secured loan has increased from 39,14,988/- as on 31.03.2010 to Rs.607,78,962/- as on 31.03.2011 and the unsecured loan has increased from Nil as on 31.03.2010 to Rs.36,45,41,838/- as on 31.03.2011 which shows that major part of investment had been made out of borrowed funds. Similarly, the total investment has increased at Rs.7,15,41,58,000/- as against Rs.1,20,449/-.

45. The assessee replied that during the year under consideration it has earned cash profit of Rs.114.96 crores (excluding amalgamating companies) and the net increase in the investment is of Rs.116.74 crores (excluding amalgamating companies). Therefore, it is evident that the investment made during the year under assessment is out of owned fund. It was further submitted

that the loans obtained during the year has been utilized towards fixed assets and capital work in progress.

46. However, the Assessing Officer was not satisfied with the explanation given by the assessee on the ground that the assessee miserably failed to discharge the primary onus cast upon it. The method of apportionment or allocation of expenses as adopted by the assessee for determining the expenses relatable to the exempt income is not correct. Since the assessee has failed to establish that no part of interest bearing funds was utilized for making such investments, the income from which was not taxable, therefore, the Assessing Officer rejected the correctness of the claim of the assessee that no interest expenditure is relatable to making such investments, the income of which was not taxable. Applying the provisions of section 14A read with Rule 8D and relying on various decisions, the Assessing Officer disallowed an amount of Rs.2,25,43,398/-.

47. In appeal, the ld. CIT(A) deleted the addition on the ground that the disallowance has been made without establishing any nexus between the interest bearing funds and exempted income yielding investment and non-interest bearing advances. He further noted that the assessee has sufficient non-interest bearing funds for making the investment in shares as it has sufficient net worth of its own. The Assessing Officer has not disputed the submission of the

assessee that no expenditure was incurred for making investment. Relying on various decisions, he held that the disallowance made by the Assessing Officer cannot be sustained.

48. Aggrieved with such order of the ld. CIT(A), the Revenue is in appeal before the Tribunal.

49. The ld. DR heavily relied on the order of the Assessing Officer.

50. The ld. counsel for the assessee while supporting the order of the ld. CIT(A) submitted that the assessee had sufficient interest free funds of its own which was stated before the Assessing Officer. It was submitted that share capital and reserves of the assessee was at Rs.559.11 crores whereas investment was only Rs.212.09 crores. Thus, there were sufficient interest free funds for making investment. Referring to the decision of the Hon’ble Gujarat High Court in the case of Pr.CIT vs. Sintex Industries Ltd. in Tax Appeal No.268 of 2017 dated 04.05.2017, he submitted that the Hon'ble High Court in the said decision has held that where the assessee had sufficient interest free fund to cover investment, disallowance u/s 14A for interest and administrative expenses is not justified.

51. Referring to the decision of the Hon’ble Bombay High Court in the case of CIT vs. Reliance Utilities & Power Ltd. reported in 313 ITR 340, he submitted that the Hon'ble High Court in the said decision has held that where

interest bearing funds are available and the interest free funds are more than investments made, the presumption is that the investment in the tax free securities would have been made out of the interest free funds with the assessee.

52. Referring to the decision of the Hon'ble Chhattisgarh High Court in the case of JCIT vs. Beekay Engineering Copr. reported in 325 ITR 384, he submitted that the Hon'ble High Court in the said decision has held that when there was sufficient funds in the account of HUF partner and substantial profit had accrued to the assessee firm in the relevant year, findings of the Tribunal that the borrowed funds were not diverted as interest free advances to the members of the HUF and thus there was no justification for making part disallowance out of interest paid on borrowed funds are findings of fact and the same did not warrant any interference.

53. Relying on various other decisions, he submitted that since the assessee had sufficient own capital and free reserves which is more than investment made, the income of which is exempt from tax, no disallowance is called for. Referring to the decision of the Hon'ble Punjab & Haryana High Court in the case of CIT vs. Abhishek Industries Ltd. reported in 380 ITR 652 and the decisions of the Kolkata Bench of the Tribunal in the case of Damodar Valley Corporation vs. Addl.CIT reported in 66 taxmann.com 25, he submitted that the initial burden was on the Assessing Officer to establish that borrowed funds

were used for making investments, the income of which exempt. However, such initial burden was not discharged by the Assessing Officer. In his alternate submission, he submitted that the disallowance cannot exceed the exempt income. For the above proposition, he relied on various decisions.

54. We have considered the rival arguments made by both the sides and perused the orders of the authorities below. We find the Assessing Officer in the instant case disallowed an amount of Rs.2,25,43,398/- u/s 14A on the ground that similar disallowance u/s 14A was made by the Assessing Officer in assessment year 2008-09 which was confirmed the ld. CIT(A) and disallowance of Rs.2,03,73,385/- was made by the Assessing Officer u/s 14A for assessment year 2010-11. We find the ld. CIT(A) deleted such disallowance on the ground that the assessee had sufficient own funds for making investment and, therefore, no disallowance is called for. We find in the immediately preceding assessment year the issue relating to section 14A was restored to the file of the Assessing Officer since the assessee had argued that the investments made by the assessee company were for strategic investments and were not for earning the exempt income. However, for the impugned assessment year, the ld. counsel for the assessee argued that its own capital and free reserves of Rs.559.12 crores is much more than the investment of Rs.212.09 crores, the income on which is exempt from tax. Thus since the assessee has sufficient own capital and free

reserves to meet the investment, therefore, no disallowance u/s 14A is called for.

55. We find some force in the above argument of the ld. counsel for the assessee. It is an admitted fact that the own capital and free reserves of the assessee company at 559.12 crores is much more than the investment of Rs.212.09 crores, the income of which is exempt from tax. The Hon'ble Bombay High Court in the case of Reliance Utilities & Power Ltd. reported in 313 ITR 340 has held that if there were funds available both interest free and overdraft and/or loans taken then a presumption would arise that investments would be out of the interest free funds generated or available with the company, if interest free funds were sufficient to meet the investments.

56. The Hon'ble Chhattisgarh High Court in the case of JCIT vs. Beekay Engineering Corporation reported in 325 ITR 384 has held that when there were sufficient funds in account of the HUF partners and substantial profit had accrued to the assessee firm in the relevant year, findings of the Tribunal that the borrowed funds were not diverted as interest free advances to the members of the HUF and thus there was no justification for making part disallowance out of interest paid on borrowed funds are finding of fact and the same did not warrant any interference.

57. We find the Hon'ble Gujarat High Court in the case of Pr. CIT vs. Sintex Industries Ltd. in Tax Appeal No.291 of 2017 order dated 04.05.2017 has also decided identical issue and held that the disallowance u/s 14A is not justified when the assessee had sufficient interest free funds out of which concerned investment had been made. The relevant observation of the Hon'ble High Court at para 9 of the order reads as under :-

> *"9. Considering the aforesaid facts and circumstances, more particularly the fact that the assessee was already having its own surplus fund and that too to the extent of Rs.1981.55 Crores against which investment was made of Rs.144.51 Crores, there was no question of making any disallowance of expenditure in respect of interest and administrative expenses under Section 14A of the Act, therefore, there was no question of any estimation of expenditure in respect of interest and administrative expenses of Rs.24,37,500/- under rule 8D of the Rules. Under the circumstances and in the facts of the case, narrated hereinabove, it cannot be said that the learned Tribunal has committed any error in deleting the disallowance of expenditure of Rs.24,37,500/- incurred in respect of interest and administrative expenses under Section 14A of the Act. We are in complete agreement with the view taken by the learned Tribunal. At this stage, decision of Division Bench of this Court in the case of Principal Commissioner of Income-tax vs. India Gelatine & Chemicals Limited, reported in [2015] 376 ITR 553 [Gujarat] needs a reference. In the said decision, it is observed and held by the Division Bench of this Court that when the assessee had sufficient interest-free funds out of which concerned investments had been made, disallowance under Section 14A is not justified."*

58. It may be pertinent to mention here that the SLP filed by the Revenue was dismissed by the Hon'ble Supreme Court vide SLP (Civil) Diary No.39602/2017 order dated 23.03.2018. Since admittedly the assessee in the instant case has sufficient own capital and free reserves of Rs.559.12 crores which is much more than the investments of Rs.212.09 crores, therefore, respectfully following the decisions cited above, we hold that no disallowance

of interest is called for. However, since the assessee is holding huge investments, the income of which is exempt from tax, therefore, some disallowance towards administrative expenses is required to be made. Considering the totality of the facts of the case, we are of the considered opinion that 2% of the dividend income received during the year may reasonably be estimated towards administrative expenses for earning such exempt income. The Assessing Officer is directed to compute the same and the order of the ld. CIT(A) is accordingly modified to this extent. The ground raised by the Revenue is accordingly partly allowed.

59. In ground of appeal no. (e), the Revenue has challenged the order of the ld. CIT(A) in deleting the addition of Rs.2,10,551/- made by the Assessing Officer on account of delayed payment of employees' contribution to PF and ESI.

60. After hearing both the sides, we find the Assessing Officer disallowed an amount of Rs.2,10,551/- being delayed payment of employees' contribution to PF and ESI under the provisions of section 2(24)(x) r.w.s. 36(1)(va) of the I.T. Act. We find the ld. CIT(A) deleted the disallowance made by the Assessing Officer on the ground that such payments were before the due date of filing of the return of income u/s 139(1) and, therefore, cannot be disallowed u/s 43B and u/s 36(1)(va) of the I.T. Act. We find identical issue had come up before the

Raipur Bench of the Tribunal in the case of DCIT vs. Hira Ferro Alloys Ltd. vide ITA Nos.358 to 360/RPR/2014 order dated 18.01.2018 wherein the Tribunal has dismissed the ground raised by the Revenue on the ground that employees' contribution to PF and ESI although deposited after the due date prescribed under the relevant date, however, were deposited before the due date of filing of the return u/s 139(1) of the I.T. Act. The various Benches of the Tribunal are also taking the consistent view that employees' contribution to PF and ESI cannot be disallowed u/s 2(24)(x) r.w.s. 36(1)(va) if such deposits are made before the due date of filing of the return. Since in the instant case the assessee has deposited the employees' contribution to PF and ESI before the due date of filing of the return u/s 139(1) of the I.T. Act, 1961, therefore, following the consistent view of the various Benches of the Tribunal on this issue, we hold that the ld. CIT(A) is justified in deleting such disallowance made by the Assessing Officer. The ground raised by the Revenue is accordingly dismissed.

61. Grounds of appeal no. (f) and (g) being general in nature are dismissed.

**C.O. No.12/RPR/2018 (By Assessee) :**

62. There was a delay of 1123 days in filing of the Cross Objection of the assessee. However, the ld. counsel for the assessee could not explain satisfactorily the reasons for such long delay in filing of this Cross Objection by

the assessee. In absence of any satisfactory explanation regarding delay in filing of the Cross Objection, such delay in filing of the Cross Objection cannot be condoned. The Cross Objection is, therefore, dismissed being barred by limitation.

63. In the result, the appeal filed by the Revenue is partly allowed for statistical purposes and the Cross Objection filed by the assessee is dismissed.

Order pronounced in the open Court on this 01st October, 2018.

| **Sd/-** | **Sd/-** |
|---|---|
| (SUCHITRA KAMBLE) | (R. K. PANDA) |
| JUDICIAL MEMBER | ACCOUNTANT MEMBER |

Dated: 01-10-2018.
*Sujeet*

*Copy of order to: -*

1) The Appellant
2) The Respondent
3) The CIT
4) The CIT(A)
5) The DR, I.T.A.T., Raipur.

By Order

//True Copy//

Sr. Private Secretary
ITAT, Raipur