IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE S.V.BHATTI

&

THE HONOURABLE MR.JUSTICE BASANT BALAJI

THURSDAY, THE 7TH DAY OF APRIL 2022 / 17TH CHAITHRA, 1944

ITA NO. 65 OF 2018

AGAINST THE ORDER/JUDGMENT IN ITA 338/2014 OF I.T.A.TRIBUNAL,COCHIN BENCH

APPELLANT/S:

M/S. KINFRA EXPORT PROMOTION INDUSTRIAL PARKS LTD.,
IX/159A, INFOPARK P.O., KAKKANAD, KOCHI-682 042.
(PAN-AABCK 0004G)

BY ADVS.
JOSEPH MARKOSE (SR.)
SRI.V.ABRAHAM MARKOS
SRI.ABRAHAM JOSEPH MARKOS
SRI.ISAAC THOMAS

RESPONDENT/S:

THE JOINT COMMISSIONER OF INCOME TAX (OSD)
CIRCLE-1(2), KOCHI-682 018.

OTHER PRESENT:

SC JOSE JOSEPH

THIS INCOME TAX APPEAL HAVING COME UP FOR ADMISSION ON 07.04.2022, ALONG WITH ITA.62/2018, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE S.V.BHATTI

&

THE HONOURABLE MR.JUSTICE BASANT BALAJI

THURSDAY, THE 7TH DAY OF APRIL 2022 / 17TH CHAITHRA, 1944

ITA NO. 62 OF 2018

AGAINST THE ORDER/JUDGMENT IN ITA 354/2014 OF I.T.A.TRIBUNAL,COCHIN BENCH

APPELLANT/S:

M/S.KINFRA EXPORT PROMOTION INDUSTRIAL PARKS LTD.,
IX/159A, INFOPARK P.O., KAKKANAD, KOCHI-682 042,
(PAN-AABCK 0004G)

JOSEPH MARKOSE (SR.)
SRI.V.ABRAHAM MARKOS
SRI.ABRAHAM JOSEPH MARKOS
SRI.ISAAC THOMAS

RESPONDENT/S:

THE ASSISTANT COMMISSIONER OF INCOME TAX,
CIRCLE-1(2),
KOCHI - 682 018.

BY ADVS.
P.K.RAVINDRANATHA MENON (SR.)
JOSE JOSEPH, SC, FOR INCOME TAX

THIS INCOME TAX APPEAL HAVING COME UP FOR ADMISSION ON 07.04.2022, ALONG WITH ITA.65/2018, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J U D G M E N T

S.V.BHATTI, J.

We have heard the learned Senior Advocate Joseph Markose and the learned Standing Counsel, Mr Jose Joseph, for parties.

2. M/s Kinfra Export Promotion Industrial Parks Ltd., Kochi/Assessee is the appellant. The Assistant/Joint Commissioner of Income Tax, Kochi/Revenue is the respondent.

3. The assessee, aggrieved by the common order dated 19.4.2018, filed the appeals under Section 260A of the Income Tax Act (for short, 'the Act'). The details of assessment order etc. are stated as follows:

Sl. No.	Assessment Year and Date of Assessment order	Order of Commissioner of Income Tax (Appeals)	Order of Income Tax Appellate Tribunal	ITA No.
1	2008-2009; dtd 15.12.2010	Appeal No. ITA 97/R-1/E/CIT-(A)II/2010-11; dtd 30.03.2014	I.TA. No.354/Coch/2014; dtd 19.04.2018	I.T.A No.62/2018
2	2009-2010; dtd 17.11.2011	Appeal No.ITA 82/R-1/E/CIT-(A)II/2011-12; dtd 30.03.2014	ITA No.338/Coch/2014; dtd 19.04.2018	I.T.A No.65/2018

4. The common circumstances in both the appeals are stated thus: The assessee, a wholly-owned subsidiary company of Kinfra (a statutory body constituted by the Government of Kerala) has established and operated an industrial park at Kakkanad, Kochi. The Government of India for the augmentation of infrastructure/facilities in Export Promotion Industrial Parks provided assistance to states under a scheme known as 'Assistance to States for Developing Export Infrastructure and other Allied Activities' (for short, 'ASIDE'). The Government of India under ASIDE, sanctioned and transferred financial assistance through the State Government to the assessee for developing infrastructure at Industrial Park, Kakkanad, Kochi. The assessee claims that the funds given to the assessee under ASIDE scheme are provided as 'grant in aid' for augmentation of infrastructure facilities in Export Promotion Industrial Park operated by the assessee. Stated briefly, infrastructure facility in the export promotion industrial park is provided through the financial assistance received under ASIDE. The grant received by the assessee considered in the subject assessment years is as follows:

Date	Amount
11.10.2006	3,75,00,885
09.10.2007	3,75,88,500

The grant received from the Government of India between 1996 and 2000 has been considered in the assessment year 2009-2010 for arriving at the written down value of assets of the assessee. The details are as follows:

Date	Amount Rs.
01.03.1996	3,00,00,000
29.03.1996	2,89,00,000
24.04.1998	2,00,00,000
31.03.1999	60,00,000
31.03.2000	1,51,00,000
Total	**10,00,00,000**

4.1 The assessee by employing the assistance under ASIDE, claims to have enhanced capacity of water and power distribution in the industrial park. The assessee asserts that the grant under ASIDE to the assessee is not for acquiring a specific asset. It is also the case of the assessee that the grant provided by the Government of India under ASIDE is not for acquiring a specific item or particular item

such as a plant or machinery by the assessee. Therefore, the assistance was employed by the assessee on need-based in the Industrial Park. The assessee, at the first instance, in its books of accounts credited the grant as capital reserve. According to the assessee, the assistance is a capital contribution under ASIDE from the Central Government, but not assistance for acquiring a specific asset. The assessee, on 30.09.2008, filed return of the assessment year 2008-2009. On 30.9.2009, filed the return for the assessment year 2009-2010. The Assessing Authority, by referring to Explanation 10 of Section 43 of the Act, in the respective assessment years detailing that the grant is a capital reserve and proportionately reduced the grant received from the written down value of fixed assets. The effect thereof, in computation, is that the depreciation claimed by the assessee has been found to be incorrect and the depreciation claimed has been disallowed in the final computation of income of the assessee as follows:

Sl.No.	Assessment year	Depreciation of Disallowance
1	2008-2009	Rs.48,04,760/-
2	2009-2010	Rs.12,65,118/-

4.2 The Assessing Officer, for the assessment year 2009-10 reduced the subsidy amounting to Rs.13,75,00,885/- received between 1996 and 2000 from the gross value of capital assets of the assessee amounting to Rs.15,44,93,432/-. Thus the Gross Value after reducing subsidy contribution has been arrived at Rs.1,69,92,547/- and depreciation of Rs.12,65,118 has been allowed and the depreciation claimed by the assessee was rejected. Substantially, the dispute between the assessee and the Revenue centres around Section 43(1) r/w Explanation and proviso of the Act. Appeals filed by the assessee for the above assessment years before the Commissioner of Income Tax (for short, 'the CIT(A)') and the Income Tax Appellate Tribunal (for short, 'the Tribunal') were dismissed. Hence the appeals.

5. A common substantial question is raised in both the

appeals as follows:

> "Whether by virtue of Explanation-10 and/or proviso to Explanation 10 to Section 43(1) introduced with effect from 1.4.1999, a subsidy or grant received before the reference to specific assets is to the apportion and reduced from the cost of assets for the purpose of completing depreciation?."

The following substantial questions of law, without prejudice to the common ground, on calculation or working of the actual cost of the asset, are framed on facts in issue:

ITA No.62 of 2018

> "1) Whether on the facts and in the circumstance of the case, the Appellate Tribunal was right in holding that the grant received by the Appellant from the Government of India under the Scheme "Assistance to States for developing Export Infrastructure and other allied activities (ASIDE) is to be reduced from the cost of assets under Section 43(1) and Explanation thereto?
>
> 2) Whether on the facts and in the circumstances of the case there was any material or evidence on record for the Appellate Tribunal to hold that the Assessing Officer was in a position to identify the subsidy utilization specifically under the head of building furniture, plant and machinery and computer software?"

ITA No.65 of 2018

> "1) Whether on the facts and in the circumstance of the case, Appellate Tribunal was right in holding that the grant received by the Appellant from the Government of India under the Scheme "Assistance to States for developing Export Infrastructure and other allied activities (ASIDE)" is to be reduced from the cost of assets under Section 43(1) and Explanation thereto?
>
> 2) Whether on the facts and in the circumstance of the case,

the Appellate Tribunal was right in holding that the grant received by the Appellant from the Government of India under the Scheme "Centrally Sponsored Schemes for Export Promotion Industrial Park (EMP) is to be reduced from the cost of assets under Section 43(1) and Explanation thereto?

3) Whether on the facts and in the circumstances of the case there was any material or evidence on record for the Appellate Tribunal to hold that the Assessing Officer was in a position to identify the subsidy utilization specifically under the head of building, furniture. plant and machinery and computer software?

4) Whether on the facts and in the circumstances of the case Appellate Tribunal was right in confirming that the grant of Rs 3,75,00 885/- received by the Appellant from the Government of India under the Scheme "Assistance to States for developing Export Infrastructure and other allied activities (ASIDE) during the Financial Year 2006-07 is to be reduced from the value of cost of assets in Assessment Year 2009-10?

5) Whether on the facts and in the circumstances of the case, Appellate Tribunal was right in confirming that the grant of Rs 10,00,00,000/ received by the Appellant from the Government of India under the Scheme "Centrally Sponsored Schemes for Export Promotion Industrial Park (EMP) during the Financial Years 1996 to 2000 is to be reduced from the value of cost of assets in Assessment Year 2009-10?"

6. Senior Adv.Joseph Markose lays emphasis on the circumstances surrounding the assistance under ASIDE Scheme to bring home the nature of grant as general, received by the Assessee from State and Central Governments. One of the objectives of the financial assistance under ASIDE is to establish infrastructure/facilities in industrial estates exclusively meant for catering to the needs of export-oriented industries. One of

the ways to boost foreign trade was to put in place developed infrastructure so that individual units are established and operated. Therefore, under this scheme, the discretion is given to the operator of a facility to use the financial assistance received in one or the other ways spelt out in the scheme; in the industrial park, thereby companies are attracted to establish industries and operate them. In other words, the assistance received is neither item-specific nor article-specific, but the financial assistance is given for establishing infrastructure facilities by the operator ie. as the assessee.

6.1 The learned counsel invited our attention, in great detail, to the ASIDE guidelines and argued that the financial assistance under the ASIDE scheme, is not for the acquisition of the plant, machinery etc., by the operator of a facility. The Revenue, it is argued, does not join issue on the nature and character of the financial assistance received by the assessee from the Government as general grant which is correct as matter of fact, therefore, we refrain from reproducing the clauses in ASID guidelines in our judgment.

7. We would hence assume and proceed to consider the *lis* on

hand that the financial assistance has been general, and discretion was given to the assessee to appropriate in the manner which suits the necessity of the assessee for making the facility fully operational. From the details set out in the utilisation certificates, the financial assistance has been expended for capacity building of electricity, water and roads within the areas under the administrative control of the assessee.

CIT vs PJ Chemicals[1].

8. It is argued that on 14.09.1994, *PJ Chemicals* was decided and the Supreme Court interpreted the words viz. 'as has been met directly or indirectly by any other person or authority' occurring in Section 43(1) of the Act and held that an incentive is not given for meeting a portion of the cost of the assets but is given to set up industries in backwards areas, such assistance cannot be deducted from the actual cost of the assets of the assessee for the purpose of Section 32 r/w Section 43 of the Act. According to the binding precedent, the financial assistance so received by the assessee is not adjusted from the cost of any asset of the assessee. *PJ Chemicals* deals

[1](1994 210 ITR 830)

with general financial assistance and the same analogy is applicable to the circumstances of the case as well.

8.1 Explanation 10, together with a proviso, has been inserted in Section 43(1) of the Act with effect from 1-04-1999. The memo explaining the reasons for insertion of explanation 10 in Finance (No.2) Bill, 1998 does not state that the instant amendment made is to overcome the effect of the ratio laid down or interpretation adopted by the Supreme Court in *P J Chemicals* case. The memorandum in Finance (No.2) Bill, 1998 concerning Explanation 10 reads thus:

> "The proposed Explanation 10 provides that where a portion of the cost of an asset acquired by the assessee has been met directly or indirectly by the Central Government or State Government or any Authority established under any Law or by any other person, in the form of subsidy or grant or reimbursement, then in a case where the subsidy is directly relatable to the asset, such subsidy shall not be included in the actual cost of the asset. In a case where such subsidy or grant or reimbursement is of such a nature that it cannot be directly relatable to any particular asset, the amount so received shall be apportioned in a manner that such asset bears to all the assets in respect of or with reference to which the subsidy or grant or reimbursement is so received and such subsidy shall not be included in the actual cost of the asset.
>
> These amendments will take effect from 1st April, 1999 and will, accordingly, apply in relation to assessment year 1999-2000 and subsequent years."

8.2 The expressions employed in Section 43(1) and

Explanation 10 are substantially same, viz. "where a portion of the cost of an asset as has been met directly or indirectly met by the other". Therefore, the view expressed in *PJ Chemicals* is applicable and the subsidy amount received is not adjusted from the cost of assets of the assessee in the subject assessment years. Though the latter portion of Explanation 10 explains viz. "when an amount is received as subsidy or grant or reimbursement (by whatever name called), then so much of the cost as is relatable to such subsidy, etc. are not to be included in the cost". The requirement noted in *PJ Chemicals* case is that the incentive should be for the specific purpose of meeting a portion of the cost of asset has not been taken away or altered by the portion of Explanation 10. By a plain reading of both the portions of Explanation 10 to Section 43(1) of the Act, the subsidy is relatable to the cost of an asset acquired is adjusted from the cost of such asset and not otherwise. The assistance is not calculated or adjusted against the cost of asset as shown in the utilisation certificate given by the assessee to Central Government. Therefore, according to the learned counsel, the plain reading, in spite of the insertion of Explanation 10 to Section 43(1) of the Act, does not change the

position and the view of the Revenue to reduce that portion of the incentive received by the assessee from the actual cost of the assets is illegal and erroneous.

8.3 The explanation is appended to a Section only to explain the meaning of the parent Section. The purpose of the Explanation is to explain and may not expand or add to the scope of the original Section. By placing due deference to the opinion expressed on Explanation 10 to Section 43(1) (by the learned authors- Kanga and Palkhivala in 'the Law and Practice on Income Tax', (11th edition)) viz. "certain observations in PJ Chemicals may be no longer valid". It is argued that the Learned authors have not observed that the judgment in *PJ Chemicals* is no more applicable for arriving at the actual cost of an asset. Explanation 10 provides that when a portion of cost is relatable to the subsidy, it is to be reduced. Therefore, the independent argument is that explanation 10 *per se* has not altered on the working of the actual cost of an asset. On the other hand, the proviso excludes or restricts the operation of the Section for which the proviso is added. The proviso is not an independent section in the structure of Section 43(1) of the Act and ought not to be relied on

for independently for determining the actual cost of asset.

8.4 In *Union of India v. VKC Footsteps (India) (P) Ltd*[2], the Supreme Court has explained the different ways, a proviso is applied and laid down that a proviso is construed in relation to the subject matter of the statutory provision to which it is appended. The argument made with considerable force is that in the case on hand, the proviso cannot be considered as an independent provision to the general subsidy given without relation to the acquisition of an asset. According to the Senior Advocate, the proviso to Explanation 10 is attracted in cases where the subsidy is not directly relatable to a particular asset, but the incentive is given for many assets. Post PJ Chemicals case and the amendment to Section 43(1) Explanation 10 and proviso, the Bombay High Court in *CIT vs. Welspun Steel Ltd*[3] held that incentives in the nature of subsidies by way of waiver of Excise Duty and Sales Tax are capital in nature and such subsidies since are not given in relation to acquisition of plant and machinery, the subsidy cannot be adjusted from the cost of assets under Explanation10 to Section 43(1).

[2] (2022) 2 SCC 603
[3](MANU/MH/1197/2019)

9. Without prejudice to the main argument of applicability of Explanation and proviso to 43(1) of the Act, it is alternatively argued that orders impugned in the appeal are illegal and computation of written down value on a broad spectrum of all the assets of the assessee is untenable. For the assessment years 2008-09, the assessee received the instalment as follows:

On 09.10.2007 - 3,75,88,500/-. The Financial year relevant to the assessment year is 2007-08. The Assessing Officer deducted Rs.3,75,88,500/- received on 09.10.2007 is as follows:

Block of anel	W.D.V as	Subsidy
Building	15565857	8474097
Furniture	2727388	1484798
Plant/ Machinery	50392376	27433755
Computer Software	359749	195848
Total	**69045370**	**37588500**

The CIT(A) misread the utilisation certificate dated 03.01.2011 and recorded a finding that the Assessing Officer is in a position to identify the subsidy utilisation specifically under the head building,

furniture, plant & machinery and computer software. The deduction of subsidy from the cost of assets acquired or the additional investment of subsidy resulting in the increase of the cost of the asset is permissible. Therefore, on fact, the actual cost arrived at for the assessment year 2008-09 is illegal and to the extent of making the adjustment against all the assets of the assessee is illegal. In so far as the assessment year 2009-10 is concerned, it is already noticed that the last instalment of the incentive of Rs.1,51,00,000/- was received on 31.03.2000. The Assessing Officer has treated the subsidy received in the financial year 2006-07 amounting to Rs.3,75,00,885/- and adjusted from the actual cost of all the assets of the assessee, and disallowed the depreciation claimed. The Assessing Officer adjusted the actual cost of assets of the assessee in the assessment year 2009-10 as follows:

STATEMENT DEPRECIATION AS ON 31/03/2009 SHOWING DEDUCTION OF SUBSIDY RECEIVED: -				
	Block of asset	**WDV as on 01/04/2008 as per 143(3) order dated 15/12/2010 for A.Y 2008-09**	**Subsidy**	**Gross Value after subsidy**
1	Buildings	7083823	5148281	636232

2	Furniture	1220865	1119532	138353
3	Plant & Machinery	83367987	131158137	16208702
4	Computer	84195	74935	9260
	Total	91756870	137500885	16992547

9.1. The incentive received prior to 01.04.1999 is adjusted in the financial year 2008-09. The view taken by this Court in *CIT vs Sun Fiber Optics*[4] and Gujarat High Court in *Banco Products vs DCIT*[5] laid down that Explanation 10 introduced with effect from 01.04.1999 applies prospectively. Therefore, any assistance received as subsidy/grant prior to 01.04.1999 cannot be adjusted in the assessment year 2009-10 for arriving at the actual cost of the asset and the depreciation is calculated on such reduced written down value or the asset. At any rate, the subsidy of Rs.8,49,00,000/- received before 01.04.1999 cannot be adjusted in the assessment year 2009-10. He argues that, reliance on *Saharanpur Electric Supply vs CIT*[6] to contend that the Assessing Officer has jurisdiction to redetermine

[4](MANU/KE/2157/2011)
[5](2015) 379 ITR 1)
[6](1992 194 ITR 296)

the actual cost of an asset is not applicable to the circumstances of the case. The assessee is denied of benefit of ratio of *PJ Chemicals.* Without prejudice to the above argument, it is further contended that the amendment introduced with effect from 01.04.1952 to the Income Tax Act, 1952 by the introduction of Explanation to the definition of 'actual cost' in the Income Tax Act, 1952, *Saharanpur Electric Supply* lays down that the meaning of the 'actual cost' as stands with effect from 01.04.1952 cannot be applied to assets acquired before 01.04.1952. Incidental addition of Rs.3,75,00,885/- in the assessment year 2009-10 is improper and denies the eligible depreciation to the assessee.

10. Adv. Jose Joseph, argues that the contention on the applicability of Explanation 10 r/w proviso to SEction 43 of the Act is untenable. The appeals relate to assessment years 2008-09 and 2009-10. The actual cost of an asset for the purpose of Section 32, is determined strictly in accordance with Section 43(1), Explanation 10 r/w proviso. Explanation 10 and/or proviso take care of specific grant for acquisition of an asset or general grant received by an assessee. Therefore, the principle laid down by the Supreme Court

interpreting the words "the portion of the cost thereof, if any, has been met" that the assistance or subsidy received must be relatable to an asset for adjustment for arriving at the actual cost of an asset is not applicable to the subject assessment years. Explanation 10 r/w proviso shall be understood as having been made by the parliament with full knowledge of the view taken by the Supreme Court in the *P.J Chemicals*. Therefore, the interpretation on Section 43, Explanation 10 r/w proviso is unavailable to the assessee.

11. Adverting to the argument viz. the Finance (No.2) Bill, 1998 or Memorandum appended to the Bill does not refer to *PJ Chemicals* judgment. Therefore, Explanation 10 and the proviso ought not to be read as nullifying the effect of *PJ Chemicals*. The learned Standing Counsel submits that a narrative in any form viz. SOR or Memorandum at best forms part of a Bill. It is axiomatic that the SOR appended to a Bill may refer to legislative power, understanding of the background, antecedent state of affairs, and the surrounding circumstances noted for bringing in legislation. The plain language of the amendment is the conclusive basis and in the event of an ambiguity in the expression of the amendment, SOR is taken as aid or

assistance for understanding the purpose and explicit words used by the legislature. The cases where the language is clear and is not ambiguous, the fact that the Supreme Court's decision is not referred to in the memorandum is not changing the interpretative value or meaning of Explanation 10 r/w proviso to Section 43(1) of the Act. Finance (No.2) Bill, 1998 sets out the reasons warranting incorporation of an Explanation to Section 43(1) and by way of a proviso, a different and distinct situation is taken care of. The assessment years covered in these two appeals are post amendment to inserting Explanation 10 and proviso to Section 43(1). The expression as its stands for the applicable assessment years must be given effect to by the authorities as well as the court. It is not a requirement in law that amendment shall state that Section 43(1), is amended to erase the effect of the ratio laid down by the Supreme Court in *P.J Chemicals* case. The parliament, in its wisdom, sets out the factors excluded in the computation of the actual cost of an asset in the hands of the assessee. The argument of the assessee that the expression in Section 43(1) and the first limb of Explanation 10 are one and the same, and therefore even now, the dictum of *PJ Chemicals*

is applicable is untenable. According to the Standing Counsel, the Explanation is not a verbatim reproduction of Section 43(1). A perusal of Explanation 10 does not allow the argument that Explanation is similar to Section 43(1) of the Act.

11.1. He argues that the proviso is clear enough to proportionately adjust the subsidy for determining the actual cost of assets in the hands of the assessee. The interpretation commended to the Court, by Mr Jose Joseph is that the golden rule of interpretation is applicable in all fours for construing Section 43(1) r/w Explanation and proviso and by such interpretation the three distinct situations viz. (a) Section 43(1) (b) Explanation 10 (c) Proviso are allowed to operate in their respective spheres. The interpretation placed or now suggested by the assessee would, for unavailable reasons in law, render the clear expression of legislature ineffective. The construction would lead to excluding the clear will of the Parliament. Read so, the adjustment of the subsidy in the assessment years by reference to the Section 43(1) Explanation 10 and proviso of the Act is tenable. Finally, it is contended that the argument on prospective application of Explanation 10 from 1-4-1999

is untenable.

12. The common substantial question (1) in ITA No.62 & 65/2018 is:

> "Whether by virtue of Explanation 10 and/or proviso to Explanation 10 to Section 43(1) introduced with effect from 01.04.1999, a subsidy or grant received without reference to specific assets is to be apportioned and reduced to the cost of assets for the purpose of computing depreciation?"

12.1 Section 32 of the Act allows depreciation on the actual cost of buildings, machinery, and plant. The qualifying words are the actual cost of the asset. The words 'actual cost' appearing in Section 32 are read and understood in the light of the definition of 'actual cost' expressed by Section 43(1) of the Act. Section 43(1) and Explanation 10 and proviso read thus:

> 43. In sections 28 to 41 and in this section, unless the context otherwise requires-
>
> (1) "actual cost" means the actual cost of the assets to the assessee, reduced by that portion of the cost thereof, if any, as has been met directly or indirectly by any other person or authority:
>
> *** **** ***
>
> Explanation 10.-Where a portion of the cost of an asset acquired by the assessee has been met directly or indirectly by the Central Government or a State Government or any authority established under any law or by any other person, in the form of a subsidy or grant or reimbursement (by whatever name called), then, so much of the cost as is relatable to such subsidy or grant or reimbursement shall not be included in the actual cost of the asset to the assessee:

> Provided that where such subsidy or grant or reimbursement is of such nature that it cannot be directly relatable to the asset acquired, so much of the amount which bears to the total subsidy or reimbursement or grant the same proportion as such asset bears to all the assets in respect of or with reference to which the subsidy or grant or in reimbursement is so received, shall not be included in the actual cost of the asset to the assessee."

13. The controversy between the Revenue and the assessee is that for the purpose of determining the actual cost of assets on which depreciation has to be allowed under Section 32 of the Act, the amount of subsidy received by the assessee should be reduced from the actual cost of the assets and the depreciation allowable only on the actual cost so reduced. The Revenue contends that the depreciation is allowable on actual cost, financial assistance/ incentives/subsidy received by the assessee could be adjusted, and the actual cost of asset reduced to that extent. The issue, in a way, begs the question since the Revenue places reliance on Explanation 10 r/w proviso to Section 43(1) of the Act, whereas the assessee would lay emphasis on P J Chemicals case and the similarity of expressions used in Section 43(1) and Explanation 10 for applying the view taken in *P J Chemicals* case.

13.1 <u>The summary and ratio of CIT v. *PJ Chemicals*</u>

The majority of the High Courts, while interpreting what

constitutes actual cost, opined that the subsidies granted to industries on a percentage of the capital costs ought not to be deductible from the actual cost under Section 43(1) of the Act for the purpose of calculation of depreciation. On the other hand, a few High Courts have taken the view that the subsidies so received by the assessee ought to be adjusted and reduced from the acquisition cost of the asset by the assessee. The ratio is the rebate as obtained on the point comes under the definition of actual cost under Section 43(1) of the Act. According to Section 43(1), actual cost means the "actual cost of the assets to the assessee, reduced by that portion of the cost thereof, if any, as has been met directly or indirectly by any other person or authority". The emphasis laid in the ratio is that if a portion of the cost is met directly or indirectly by any person or authority, the actual cost would, for the purposes of Sections 28 to 41, be the cost minus the subsidy. The logic behind such deduction from actual cost is that the assessee should not have the benefit of depreciation on a cost that the assessee did not pay himself. The Supreme Court also noted the controversy in P J Chemicals is not whether a portion of the cost is met directly or indirectly by any other person or authority,

and if so, it should be deducted or not. If a portion of the cost is met directly or indirectly, such subsidy shall be adjusted in the actual cost of the asset. The real question deals with the character and nature of the subsidy, whether it was intended to subsidise the cost of the capital or was intended as **an incentive to** encourage entrepreneurs to move to backward areas and establish industries, the specified percentage of the fixed capital cost, which is the basis for determining the subsidy being only a measure adopted under the scheme to quantify the financial aid. The expression 'actual cost' needs to be interpreted liberally. The subsidy of the nature the court examining does not partake the incidence, which attracts the conditions for the deductibility from the actual cost. The Government subsidy is not unreasonable to say it is an incentive not for the specific purpose of meeting a portion of the cost of the assets though quantified as or get to a percentage of that cost. If that be so, it does not partake of the character of the payment intended either directly or indirectly to meet the actual cost.

14. The Parliament by the Finance (No.2) Act, 1998 introduced Explanation 10 r/w proviso to Section 43 of the Act.

14.1 The Revenue argues that a line has to be drawn for the application of the dictum in P J Chemicals between pre and post 1.4.1999. In cases where the subsidy is received, Explanation 10 deals with a portion of the cost of an asset acquired by the assessee has been met directly or indirectly by a third party and the grant is in the form of a subsidy in such a situation so much of the cost as is relatable to such subsidy shall not be included in the actual cost to the assessee. In terms of the proviso, the subsidy if cannot be directly relatable to any asset acquired by the assessee, then so much of the amount which bears to the total subsidy or reimbursement, the same proportion as such asset bears to all the assets in respect of the subsidy is so received with reference to which the subsidy or grant or reimbursement is so received.

14.2 The assessee claims that the grant received under ASIDE guidelines is not for the acquisition of a particular asset. Therefore, Explanation 10 is not attracted or adjustment of subsidy in the actual cost of the asset. A proviso excepts or excludes, and the proviso shall not be read as an independent section.

15. The decisions relied on by the parties are either prior to

1.4.1999, or the decisions have not considered Explanation 10 as a stand-alone provision or interpreted Explanation 10 and the proviso to Section 43(1) of the Act. Therefore, the learned counsel appearing for the parties commended to us construction of the Explanation and the proviso as it supports their respective arguments. For brevity, we are not referring to the argument once again at this juncture of the discussion.

15.1 Finance (No.2) Bill, 1998 is effective from 01.04.1999 and is introduced post *PJ Chemicals* case. The case law under Section 43(1) of the Act up to 31.03.1999 would be helpful, if the actual cost is determined only by interpreting Section 43(1) of the Act. Now the Court, in the case on hand, is called upon to construe Explanation10 r/w proviso and apply it to the circumstances of the case.

15.2. It is apt to refer to the Hon'ble Mr. Justice R.C Lohati's view in *Bhaiji vs Sub Divisional Officer, Thandla*[7] on the utility and interpretative value of SOR or Memorandum appended to a Bill.

> "Reference to the Statement of Objects and Reasons is permissible for understanding the background, the antecedent state of affairs, the surrounding circumstances in relation to the statute, and the evil which the statute sought to remedy. The

[7](2003 1 SCC 692).

> weight of judicial authority leans in favour of the view that Statement of Objects and Reasons cannot be utilized for the purpose of restricting and controlling the plain meaning of the language employed by the Legislature in drafting statute and excluding from its operation such transactions which it plainly covers".

The above view is an answer to the first argument of the assessee that the Bill and the Memorandum are silent on *PJ Chemicals* case. The Memorandum is an introductory note and serves the purpose of SOR for the proposed amendment. The reason that PJ Chemicals is not referred to in the Memorandum, in our considered view is not making a material difference to Explanation 10 and the proviso of Section 43(1) unless this Court notices ambiguity in the text of Explanation 10 r/w proviso. This Court is under obligation to appreciate the Explanation and the proviso and would decide its meaning and scope.

15.3 An explanation at times is appended to a section to explain the meaning of words, contained in the section. It becomes a part and parcel of the enactment. The meaning to be given to an explanation must depend upon its terms, and no theory of its purpose can be entertained unless it is to be inferred from the language used. *(Krishna Ayyanakr v. Nattaperumal Pillai*[8]*, Dattatraya Govind Mahajan v. State of*

[8](ILR 43 madras 550

Maharashtra[9] *and Aphali Pharmaceuticals Ltd v. State of Maharashtra*[10]*).* Purposive construction is permissible if any other construction which does not fit in with the description or the avowed purpose. We may sum up the objects of an explanation by referring to *Sundaram Pillai v. Pattabiraman*[11]:

> "(a) to explain the meaning and intendment of the Act itself,
> (b) where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to subserve.
> (c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful,
> (d) an Explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the Explanation, in order to suppress the mischief and advance the object of the Act it can help or assist the Court in interpreting the true purport and intendment of the enactment, and
> (e) it cannot, however, take away a statutory right with which any person under a statute has been clothed or set at naught the working of an Act by becoming an hindrance in the interpretation of the same."

15.4. Precisely stated a proviso is a clause that introduces a condition by the word 'provided'. A proviso is introduced to indicate the effect of certain things which are within the statute but accompanied with the peculiar conditions embraced within the proviso. It modifies the immediately preceding language. (James

[9](1977 2 SCC 548),
[10](1989 4 SCC 378).
[11](1985 1 SCC 591

DeWitt Andrews- statutory construction)

15.5. The purpose and functions of a proviso are set out in great detail by the Supreme Court in *Union of India v. VKC Footsteps (India) (P) ltd*[12] in para 91 to 94, read thus:

> "Construing the proviso.
>
> 91. Provisos in a statute have multi-faceted personalities. As interpretational principles governing statutes have evolved, certain basic ideas have been recognised, while heeding to the text and context. Justice G.P. Singh, in his seminal text, Principles of Statutory Interpretation formulates the governing principles of interpretation which have been adopted by courts while construing a statutory proviso. The first rule of interpretation is that:
>
> "The normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. As stated by Lush, J.; (QBD p. 173). '.... When one finds a proviso to the section, the natural presumption is that but for the proviso the enacting part of the section would have included the subject-matter of the proviso. In the words of Lord Macmillan (SCC Online PC) '... The proper function of a proviso is to except and to deal with a case which would otherwise fall within the general language of the main enactment, and its effect is confined to that case. The proviso may, as Lord Macnaghten laid down, be a qualification of the preceding enactment which is expressed in terms too general to be quite accurate (AC p. 62). The general rule has been stated by Hidayatullah, 1.2, in the following words: (AIR p. 1600, para 9) 9. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment, and ordinarily, a proviso is not interpreted as stating a general rule. And in the words of Kapur. J.2 (AIR p. 717, para 9) *9. ...The proper function of a proviso is that it qualifies the generality of the main enactment by providing an exception and taking out as it were, from the main enactment, a portion which, but for the proviso would fall

[12](2022) 2 SCC 603

within the main enactment...."(emphasis supplied)

92. But then these principles are subject to other principles of statutory interpretation which may supplement or even substitute the above formula. These other rules which have been categorised by Justice G.P. Singh are summarised as follows:

92.1. A proviso is not construed as excluding or adding something by implication:

"Except as to cases dealt with by it. a proviso has no repercussion on the interpretation of the enacting portion of the section so as to exclude something by implication which is embraced by clear words in the enactment."

92.2. A proviso is construed in relation to the subject-matter of the statutory provision to which it is appended:

"The language of a proviso even if general is normally to be construed in relation to the subject-matter covered by the section to which the proviso is appended. In other words, normally a proviso does not travel beyond the provision to which it is a proviso. It is a cardinal rule of interpretation", observed Bhagwati, J., "that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other. "

92.3. Where the substantive provision of a statute lacks clarity, a proviso may shed light on its true meaning:

"If the enacting portion of a section is not clear, a proviso appended to it may give an indication as its true meaning. As stated by Lord Herschell27: (AC p. 655) "Of course a proviso may be used to guide you in the selection of one or other of two possible constructions of the words to be found in the enactment, and shew when there is doubt about its scope, when it may reasonably admit of doubt as to its having this scope or that, which is the proper view to take of it:"

92.4. An effort should be made while construing a statute to give meaning both to the main enactment and its proviso bearing in mind that sometimes a proviso is inserted as a matter of abundant caution:

"The general rule in construing an enactment containing a proviso is to construe them together without making either of them redundant or otiose. Even if the enacting part is clear effort

is to be made to give some meaning to the proviso and to justify its necessity. But a clause or a section worded as a proviso, may not be a true proviso and may have been placed by way of abundant caution."

92.5. While ordinarily, it would be unusual to interpret the proviso as an independent enacting clause, as distinct from its main enactment, this is true only of a real proviso and the draftsperson of the statute may have intended for the proviso to be, in substance, a fresh enactment:

"... To read a proviso as providing something by way of an addendum or as dealing with a subject not covered by the main enactment or as stating a general rule as distinguished from an exception or qualification is ordinarily foreign to the proper function of a proviso. However, this is only true of a real proviso. The insertion of a proviso by the draftsman has not always strictly adhered to its legitimate use and at times a section worded as a proviso may wholly or partly be in substance a fresh enactment adding to and not merely excepting something out of or qualifying what goes before."

93. Perhaps the most comprehensive and oft-cited precedent governing the interpretation of a proviso is the decision of this Court in S. Sundaram Pillai v. V.R. Pattabiraman, S. Murtaza Fazal Ali, J. speaking for a three-Judge Bench of this Court held: (SCC p. 610, para 43)

'43. .....To sum up, a proviso may serve four different purposes:

(1) qualifying or excepting certain provisions from the main enactment:

(2) it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable:

(3) it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and

(4) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision."

94. While enunciating the above principles, S. Sundaram Pillai" took note of the decision in Hiralal Rattanlal v. State of U.P.

> where K.S. Hegde, J... speaking for a four-Judge Bench of this Court observed that while ordinarily, a proviso is in the nature of an exception, the precedents indicate that sometimes a proviso is in the nature of a separate provision, with a life of its own. The Court held: (Hiralal Rattanlal case2, SCC p. 224, para 22). (Emphasis supplied)
>
> > "22. ... Ordinarily a proviso to a section is intended to take out a part of the main section for special treatment. It is not expected to enlarge the scope of the main section. But cases have arisen in which this Court has held that despite the fact that a provision is called a proviso, it is really at separate provision and the so-called proviso has substantially altered the main section. In CIT v. Bipinchandra Maganlal & Co. Ltd this Court held that by the fiction in Section 10(2)(vii) second proviso read with. Section 2(6-C) of the Indian Income Tax Act. 1922 what is really not income is, for the purpose of computation of assessable income, made taxable income."
> >
> > (Emphasis supplied)
>
> Besides the decision in CIT v. Bipinchandra Maganlal & Co. Ltd. the Court in Hiralal Rattantal adverted to the earlier decisions in State of Rajasthan v. Leela Jain and Bihta Coop. Development Cane Mktg. Union Ltd. v. Bank of Bihar."

16. The first and foremost guiding canon is the rule of literal construction. The arguments on both sides apply the rule of literal construction to the explanation and to the proviso as the case may be. But different destinations are reached suiting respective stands. As a Court, we would prefer literal construction walk the path of language in understanding what Explanation 10 means and proviso. Interpreted so, we are of the view that Explanation 10 takes care of a situation where a portion of the cost of an asset acquired by the

assessee has been met directly or indirectly by the Central/State Government Authority or any other person and such receipt is in the form of a subsidy or grant or reimbursement (by whatever name called) in such situation, so much of the cost as is relatable to such subsidy, or grant or reimbursement shall not be included in the actual cost of the asset to the assessee. Applying the above construction to circumstances in the case on hand, without much deliberation, this Court concludes that the financial assistance received by the Assessee from the Government under the ASIDE scheme is not asset-specific. Therefore, Explanation 10 *per se* is not attracted to the case of the assessee. The said conclusion does not resolve the controversy on hand. For a definite view ought to be recorded after reading all the provisions applicable to the principle of determining the actual cost of the asset.

16.1 In *VKC Footsteps* case, in para 92.3, 92.4, laid down the use of a proviso may shed light on the true meaning of the section; as a matter of abundant caution; acquires the tenor and color of the substantive enactment. we are hence not agreeing with the argument of assessee that the proviso be read as a qualification alone.

Such interpretation, in our considered view, goes against the text of the very proviso inserted with Explanation 10 by Finance (No.2) Bill, 1998. The proviso, however, as it stands, takes care of a situation where such subsidy or grant or reimbursement is of such nature but the subsidy or grant or reimbursement cannot be directly relatable to the asset acquired by the assessee. In such a situation, the proviso envisages that so much of the amount which bears to the total subsidy or reimbursement or grant, the same proportion as such asset bears to all the assets in respect of or with reference to which subsidy or grant or reimbursement is so received shall not be included in the actual cost of the asset to the assessee. The proviso enables adjustment of subsidy in all the assets of the assessee. The language of the proviso is clear that the subsidy received without specifics shall have to be adjusted from the assets of the assessee. The object is to limit depreciation only on the actual cost of the assets of the assessee. The proviso takes care of the general financial assistance i.e. without specific purpose, received and the actual cost is worked as per the proviso. We follow the precedent in *Sundaram Pillai* case (supra) on the point and hold that the proviso is an independent expression on

working of actual cost of assets of assessee. The assessee, under the ASIDE, in the assessment year 2008-09 received Rs.3,75,00,885/- and for the assessment year 2009-10 though has not received any financial assistance, the actual cost of the asset has been reworked by deducting the financial assistance received up to the financial year 2000-01. Any other interpretation or construction of Explanation 10 and proviso would be contrary to the explicit words used by the parliament for achieving a particular object of granting depreciation on the actual cost incurred by the assessee. The Explanation and the proviso, in our understanding, are clear and do not suffer from ambiguity. This relates other substantial questions of law and would be considered independently.

17. Hence, we hold that financial assistance received without reference to specific purpose, still by application of proviso to Explanation 10 of section 43(1) of the Act the actual cost is apportioned and reduced from the cost of the assets of the assessee for the purpose of computing the depreciation. For the above reasons, the common question in both the appeals is answered in favour of Revenue and against the assessee.

The substantial question No.2 in ITA No. 62/2018

18. Assessee contends that the apportionment of the subsidy to building, furniture, plant & machinery, computer software etc. is illegal and contrary to the definition of the actual cost under Section 43(1) of the act r/w Explanation 10 r/w proviso. The assessee has discretion under ASIDE to utilise the grant on need-based development. So as evidenced by the utilisation certificate dated 03.01.2011, the assessee utilised the financial assistance for capacity enhancement of the water and power distribution facilities in the Industrial Park. The Assessing Officer for the assessment year 2008-09 apportioned the subsidy of Rs.3,75,88,500/- against all the assets of the assessee. The proviso, even if is applicable under the scheme, the assessee has the discretion to spend the amount either acquire an asset or enhance the capacity of an asset. When it comes to the determination of actual cost, the adjustment shall be made only in respect to the asset against which the amount has been spent. The actual cost of the asset has arrived arbitrarily. The CIT(A) fell in serious error by reading the utilisation certificate dated 03.01.2011 for assuming that the Assessing Authority knows the asset wise

investment made by the assessee. The assessment order is dated 15.12.2010. The utilisation certificate is subsequent to the assessment order. The basis for apportioning is not tenable both in law and fact. The Revenue argues that in the absence of details from the assessee about the acquisition of assets proportionate distribution of financial assistance against all the assets by the assessing authority is tenable.

19. We have perused the assessment order and the other confirmation orders of CIT(A) and the Tribunal. The Revenue is unable to controvert the stand of the assessee that in the exercise of the discretion given to the assessee on utilisation of funds, the assessee has enhanced the capacity of existing facilities viz. power, water distribution in the Industrial Park under its administration. For the purpose of Section 32 of the Act, the actual cost of assets alone will have to be determined, and in a broad spectrum, the subsidy is deducted even in respect of the assets which did not have value addition from or through the financial assistance received under ASIDE then the very purpose of depreciation of an asset is defeated/undermined. The extent of details furnished in Annexure-1 to the assessment order dated 15.12.2010, we are of the view that

the apportionment of subsidy against the written down value of the assets as on 01.04.2007 on building, furniture and plant & machinery, computer software etc. suffer from patent illegality and what is due to the assessee while determining the actual cost of the asset is denied.

20. Therefore, the order of assessment is set aside to the extent that the subsidy is apportioned against all the assets viz. building, furniture and plant & machinery, computer software. The matter is remitted to the Assessing Officer for determination afresh. The assessee, since can place the actual cost after deducting the amount spent in the capacity building of the water and power distribution and files revised statements taking into consideration such revised statements, the assessment is completed. The question under consideration is answered in favour of the assessee and against the Revenue, as indicated above.

Question Nos. 4 and 5 in ITA No.65 of 2018.

21. The substantial question deals with two entries; one for the financial year 2006-07 amounting to Rs.3,75,00,885/- and Rs.10,00,00,000/- received by the assessee during the financial years

1996-2000 can be reduced from the value of the cost of assets in the assessment year 2009-10. The financial assistance received during the financial years 1996-2000, is stated thus:

Date	Amount (Rs.)
01.03.1996	3,00,00,000
29.03.1996	2,89,00,000
24.04.1998	2,00,00,000
31.03.1999	60,00,000
31.03.2000	1,51,00,000
Total	**10,00,00,000**

22. Mr Joseph Markose argues that on 14.09.1994, *PJ Chemicals* was decided by the Supreme Court. In all fours, the dictum laid down by the Supreme Court in *PJ Chemicals* case is applicable to the case of the assessee upto 31.03.1999. Explanation 10 and proviso to Section 43, do not have retrospective operation. Therefore, financial assistance received till 31.03.1999 cannot be adjusted in the actual cost of any of the assets of the assessee for the financial years during which the assistance was received, because the financial assistance was not for acquiring any specific asset. At best without prejudice to the principal argument, it is contended that on 31.03.2000 a sum of

Rs.1,51,00,000/- was received. The reworking of the actual cost of the asset is limited only to the extent of the amount received subsequent to 01.04.1999. He relies on the judgment of this in *CIT vs Sun Fiber Optics*[13] and Gujarat High Court in *Banco Products vs DCIT*[14] for the proposition that amendment to Section 43(1) is prospective and applicable to the financial assistance received and assets acquired subsequent to 01.04.1999. The next limb deals with including Rs.3,75,00,885/- in the assessment year 2009-10. The financial assistance is not received in the financial year ending on 31.03.2009 and assistance is adjusted against all the assets of the assessee in the assessment year 2009-10. Therefore, the reckoning of Rs.13,75,00,885/- as financial assistance received in the financial year ending on 31.03.2009 is without basis and the calculation is illegal.

23. Standing Counsel Mr Jose Joseph places reliance on *Saharanpur Electric Supply* case and contends that the Assessing Officer is not precluded from reworking the cost of an asset for the purpose of Sections 32 and 43. In the case on hand, what has been done is reworking the actual cost for the assessment year. Therefore, there

[13](MANU/KE/2157/2011)
[14](2015) 379 ITR 1)

is no illegality and infirmity. The reliance on the *Saharanpur* case by the Revenue, in our considered view, is untenable. The ratio is that the Assessing Authority can redetermine the original cost, which was accepted by his predecessor. But the case on hand, the Assessing Authority is not going behind the original cost accepted by his predecessor, but adjusting the subsidy in the current financial year the subsidies received several years back earlier to 1-4-1999. Therefore, the ratio of *Saharanpur* case is distinguishable and does not apply to the facts and circumstances of the case. Hence the objection raised is rejected.

24. We keep in perspective the nature of financial assistance received by the assessee between 1996 to 2000. It is not the case of Revenue that the financial assistance/subsidy during 1996 to 2000 is for acquiring a specific asset. The purpose, as mooted in the preceding paragraph under the ASIDE scheme, was to provide stimulus to exports and enhance foreign trade. The Central Government is left to the discretion of the State Government and/or the authorities where export-oriented industries are set up to replenish the infrastructure from the financial assistance given to the

assessee. This being the undisputed fact, treating the entire financial assistance received in the slab years as falling under the proviso introduced with effect from 01.04.1999 is illegal and unsustainable. It is not the case of Revenue before us that the amendment is retrospective. The justification offered for reworking the actual cost of assets is on the ratio decided in *Saharanpur Electric Supply* case. we have already held that the said judgment is distinguishable. No material is placed indicating that the amendment inserted through the Finance (No.2) Bill, 1998 has retrospective operation or nullified the dictum of *PJ Chemicals*. We are in complete agreement with the view expressed both by this Court and the Gujarat High Court, on the amendment to Section 43(1), Explanation 10 and the proviso as prospective. The adjustment of Rs.13,75,00,885/- as noted in the assessment order is illegal, and even for the view, we have taken while answering the main question, unsustainable.

25. Having regard to the above discussion, we are of the view that the computation of depreciation under Section 32 r/w Section 43 for the assessment year 2009-10 is illegal and liable to be set aside and accordingly set aside. The Assessing Officer is directed to

redetermine the actual cost by excluding the amount received by the assessee prior to 31.03.1999.

26. To sum up, this Court held that apportionment of Rs.3,75,88,500/- on the written down value of the assets as on 01.04.2008 and also on all the assets of the assessee, for the assessment year 2008-09 is illegal. The adjustment at best could be against the assets which received the addition from financial assistance received under ASIDE. Therefore, insofar as the assessment year 2009-10 is concerned, the inclusion of the financial assistance received upto 31.03.1999 is incorrect and contrary to the ratio of *PJ Chemicals* judgment. Therefore by excluding assistance received upto 31.03.1999 the balance financial assistance i.e Rs.1,51,00,000/- received needs to be reworked. It is hardly clear from the material on record that the reasons for including Rs.3,75,88,500/-in the assessment year for working the actual cost of the assets for depreciation for the assessment year 2009-10. Therefore, to the limited extent of financial assistance received after 01.04.1999, the assessee is given liberty to file a statement on utilisation of assistance for capacity building of assets in the subject assessment years and the

Assessing Officer shall pass fresh orders. The question as indicated above is answered in favour of the assessee and against the Revenue. Question Nos. 4 and 5 in ITA No.65 of 2018 as indicated above, are answered in favour of the Assessee and against the Revenue.

Appeals are allowed in part and matters are remitted to Assessing Officer. No order as to costs.

Sd/-

S.V.BHATTI

JUDGE

Sd/-

BASANT BALAJI

JUDGE

JS

APPENDIX OF ITA 62/2018

PETITIONER'S ANNEXURES

ANNEXURE A	**TRUE COPY OF THE ORDER DATED 16.4.2002 OF THE PRINCIPAL SECRETARY TO GOVERNMENT OF KERALA CONFIRMING APPROVAL AND SANCTIONING OF THE GRANT UNDER ASIDE BY GOVERNMENT OF INDIA.**
ANNEXURE B	**TRUE COPY OF THE RELEVANT GUIDELINES UNDER ASIDE SCHEME**
ANNEXURE C	**TRUE COPY OF THE MINUTES OF THE 7TH SLEPC MEETING HELD ON 24.8.2006.**
ANNEXURE D	**TRUE COPY OF THE AGREEMENT DATED 13.9.2006 EXECUTED BY KINFRA WITH THE APPELLANT.**
ANNEXURE E	**TRUE COPY OF THE STATEMENT OF UTILIZATION DATED 3.1.2011 SUBMITTED BY THE APPELLANT TO THE GOVERNMENT.**
ANNEXURE F	**TRUE COPY OF THE ASSESSMENT ORDER DATED 28.12.2009 OF THE DEPUTY COMMISSIONER OF INCOME TAX CIRCLE 1 (3), ERNAKULAM FOR AY 2007-08.**
ANNEXURE G	**TRUE COPY OF THE ASSESSMENT ORDER DATED 15.12.2010 OF THE RESPONDENT FOR AY 2008-09.**
ANNEXURE H	**TRUE COPY OF APPELLATE ORDER DATED 30.3.2014 PASSED BY THE COMMISSIONER OF INCOME TAX (APPEALS-II), KOCHI FOR A7 2008-09.**
ANNEXURE I	**TRUE COPY OF SECOND APPEAL NO.354/COCH/2014 DATED 16.7.2014 FILED BY THE APPELLANT BEFORE THE INCOME TAX APPEL-LATE TRIBUNAL, COCHIN BENCH.**
ANNEXURE J	**CERTIFIED COPY OF THE IMPUGNED COMMON OR-DER DATED 19.4.2018 OF THE INCOME TAX AP-PELLATE TRIBUNAL, COCHIN BENCH, COCHIN IN I.T.APPEAL NO.354/COCH/2014.**

APPENDIX OF ITA 65/2018

PETITIONER'S ANNEXURES

ANNEXURE-A	**TRUE COPY OF THE ORDER DATED 16/04/2002 OF THE PRINCIPAL SECRETARY TO GOVERNMENT OF KERALA CONFIRMING APPROVAL AND SANCTIONING OF THE GRANT UNDER ASIDE BY GOVERNMENT OF INDIA.**
ANNEXURE-B	**TRUE COPY OF THE RELEVANT GUIDELINES UNDER ASIDE SCHEME.**
ANNEXURE-C	**TRUE COPY OF THE MINUTES OF THE 7TH SLEPC MEETING HELD ON 28/10/2005.**
ANNEXURE-D	**TRUE COPY OF THE AGREEMENT DATED 13/09/2006 EXECUTED BY KINFRA WITH THE APPELLANT.**
ANNEXURE-E	**TRUE COPY OF THE STATEMENT OF UTILIZATION DATED 03/01/2011 SUBMITTED BY THE APPELLANT TO THE GOVERNMENT.**
ANNEXURE-F	**TRUE COPY OF THE ASSESSMENT ORDER DATED 28/12/2009 OF THE DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE 1(3), ERNAKULAM FOR AY 2007-08.**
ANNEXURE-G	**TRUE COPY OF THE SCHEME OF GOVERNMENT OF INDIA CALLED 'CENTRALLY SPONSORED SCHEMES FOR EXPORT PROMOTION INDUSTRIAL PARK (EMP).'**
ANNEXURE-H	**TRUE COPY OF THE MINUTES OF THE INTER MINISTERIAL COMMITTEE HELD ON 26/09/1994.**
ANNEXURE-I	**TRUE COPY OF THE COMMUNICATION DATED 28/09/1994 FROM THE GOVERNMENT OF INDIA, MINISTRY OF COMMERCE TO THE CHIEF SECRETARY, GOVERNMENT OF KERALA.**
ANNEXURE-J	**TRUE COPY OF THE ASSESSMENT ORDER DATED 17/11/2011 OF THE RESPONDENT FOR AY 2009-10.**
ANNEXURE-K	**TRUE COPY OF THE APPELLATE ORDER DATED 30/03/2014 PASSED BY THE COMMISSIONER OF INCOME TAX (APPEALS)-II, KOCHI FOR AY 2009-10.**
ANNEXURE-L	**TRUE COPY OF SECOND APPEAL NO.338/COCH/2014 DATED 09/07/2014 FILED BY**

	THE APPELLANT BEFORE THE INCOME TAX APPEL-LATE TRIBUNAL, COCHIN BENCH.
ANNEXURE-M	**TRUE COPY OF THE IMPUGNED COMMON ORDER DATED 19/04/2018 OF THE INCOME TAX APPEL-LATE TRIBUNAL COCHIN BENCH, COCHIN IN IT APPEAL NO. 338/COCH/2014.**