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ADITYA BIRLA CHEMICALS INDIA LTD. (FORMERLY KNOWN AS BIHAR CAUSTIC & CHEMICALS LTD.) & ORS. vs. ASSISTANT COMMISSIONER OF INCOME TAX & ORS.

IN THE ITAT RANCHI

S.S. GODARA, JM & DR. A. L. SAINI, AM.

ITA Nos. 125 to 127/Ran/2015, 131, 136 & 137/Ran/2015 (C.O. Nos. 18 to 20 /Ran/2017)

Jul 8, 2020

(2020) 59 CCH 0206 Ranchi Trib

Legislation Referred to

Section 143(3), 37(1), 80-IA

Case pertains to

Asst. Year 2008-09 to 2010-11

Cases Referred to

Dy.CIT Vs. Columbia Asia Hospitals (P) Ltd. (2013) 142 ITR 225 (Bang.) (Trib.)

Tide Water oil co (India) Ltd Vs CIT, 353 ITR 300

West Coast Paper Mills Ltd. Vs. Asstt. Commissioner of Income Tax [2006] 103 ITD 19 MUM [2006] 286 ITR 252 MUM

Counsel appeared:

Devesh Poddar, Advocate for the Appellant.: Inderjeet Singh, CIT, DR for the Respondent

DR. A. L. SAINI, AM.

1. Captioned appeals and cross objections filed by the Assessee and Revenue pertaining to assessment years 2008-09 to 2010-11, are directed by the separate orders passed by the commissioner of income tax (Appeals), which in turn arise out of separate assessment orders passed by the assessing officer under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') .

2. Since, the issues involved in all the appeals and cross objections are common and identical; therefore, these appeals and cross objections have been heard together and are being disposed of by this consolidated order. For the sake of convenience, the grounds as well as the facts narrated in ITA No.125/Ran/2015, for assessment Year 2008-09, ITA No.131/Ran/2015, for assessment Year 2008-09,

ITA No.126/Ran/2015, for assessment Year 2009-10 have been taken into consideration for deciding the above appeals en masse.

3. Although, these appeals filed by the Assessee and Revenue for Assessment Year 2008-09, 2009-10 and 2010-11 and Cross-Objections filed by the Assessee in Assessment Years 2008-09, 2009-10 and 2010-11, contain multiple ground of appeals. However, at the time of hearing we have carefully perused all the grounds raised by the Revenue and Assessee, as well as cross objections raised by the Assessee. Most of the grounds raised by the Revenue as well as Assessee, are either academic in nature or contentious in nature. However, to meet the end of justice, we confine ourselves to the core of the controversy and main grievances of Revenue and the Assessee as well. With this background, we summarize and concise the grounds raised by the Revenue as well as Assessee as follows:

Summarized Grounds of Revenue Appeals

ITA NO. 131/Ran/2015, Revenue Appeal, for A.Y. 2008-09

Ground No. 1 : Addition u/s 40(a)(ia) of Rs. 45,17,640/- on account of payments made as consultancy charges to MsUdhe.

This ground also relates to Ground no. 1 of C.O. No. 18/Ran/2017.

Ground No. 2: Addition under Rebate and claim of Rs. 78,00,190/- on account of payments made as rebates and claims, on the ground that it is unascertained liability and a provision. Ld. CIT(A) has given full relief after calling for remand report. This ground also relates to Ground no. 2 of C.O. No. 18/Ran/2017, Ground no. 2 of Revenue appeal in ITA No. 136/Ran/2015 for A.Y. 2009-10, Ground no. 2 of C.O. No. 19/Ran/2017 A.Y. 2009-10, Ground no. 2 of Revenue's Appeal in ITA NO. 137/Ran/2015 A.Y. 2010-11, C.O. No. 2 of Assessee's C.O. No. 20/Ran/2017 A.Y. 2010-11.

Ground No. 3: Addition on account of community welfare expenses Rs. 52,77,946/- on various heads on account of CSR expenses, community welfare exp. etc. This ground also relates to Ground no. 3 of C.O. No. 18/Ran/2017, Ground no. 3 of Revenue's Appeal in ITA No. 136/Ran/2015 for A.Y. 2009-10, Ground no. 3 of C.O. No. 19/Ran/2017, Ground no. 3 of Revenue's Appeal in ITA No. 137/Ran/2015 A.Y. 2010-11, C.O. No. 3 of assessee's C.O. No. 20/Ran/2017 A.Y. 2010-11.

Ground no. 4 :Addition on account books and periodicals Rs. 37,74,696/-. This ground also relates to ground no. 3 of C.O. No. 18/Ran/2017.

Ground no. 5 : Addition on account of Gardening Expenses Rs. 89,97,609/- This ground also relates to Ground no. 3 of C.O. No. 18/Ran/2017.

Ground no. 6 : Ld. CIT(A) has erred in deleting the addition made on account of excess sale value of power plant unit by taking the market rate and the actual cost of production. This ground covers ground no. 4 of Revenue's appeal in ITA No. 136/Ran/2015 for A.Y. 2009-10, cross objection no. 4 of assessee's C.O. No. 19/Ran/2017 for A.Y. 2009-10 , Ground no. 6 of Revenue's appeal in ITA No. 136/Ran/2015 for A.Y. 2009-10, Ground no. 4 of Revenue's appeal in A.Y. 2010-11, Ground no. 6 of Revenue's appeal in ITA NO. 137/Ran/2015 A.Y. 2010-11 and C.O. No. 4 of assessee in C.O. 20/Ran/2017 A.Y. 2010-11.

Ground no. 7 : Ld. CIT(A) has erred in deleting the addition made on allocation of expenses to Power plant unit.

This ground covers ground no. 5 of Revenue's appeal in ITA No. 136/Ran/2015 for A.Y. 2009-10, cross objection no. 4 of assessee's C.O. No. 19/Ran/2017 for A.Y. 2009-10. Ground no. 5 of revenue's appeal in ITA NO. 137/Ran/2015, A.Y. 2010-11, C.o. NO. 5 of assessee's C.O. No. 20/Ran/2017 for A.Y. 2010-11.

Summarized Grounds of Assessee's Appeals

ITA No. 125/Ran/2015 Assessee's appeal for A.Y. 2008-09

1. Ground Nos. 1 to 9 raised by the assessee in respect of disallowance of various expenses on ad hoc basis. This ground covers assessee's appeal in ITA No. 126/Ran/2015, Ground no. 2 to 7, and ITA No 127/Ran/2015 Ground no. 1 to 6.

2. Ground No. 10 raised by the assessee relates to disallowance of claim of deduction u/s 80IA of Rs. 43,10,307/- on account of adjustment to the market price by reducing the electricity duty without appreciating the fact that electricity duty is a part of the market price if the same is purchased from outside. This ground covers assessee's appeal in ITA NO. 126/Ran/2015 ground no. 8 and ITA No. 127/Ran/2015 Ground no. 7.

3. Ground No. 11 raised by the assessee relates to reallocating the expenses on account of directors remuneration of Rs. 17,14,560/- and thereby reducing the claim of deduction u/s 80IA by the same amount. Since this expense is already shared between 80IA plant and other plant, hence there is no question of again sharing the same expenses to 80IA plant.

4. Ground No. 12 raised by the assessee relates to reallocating the expenses on account of directors sitting fees of Rs. 1,95,050/- and thereby reducing the claim of deduction u/s 80IA by the same amount. This ground covers assessee's appeal in ITA No. 126/Ran/2015 ground no. 9 and ITA NO. 127/Ran/2015 Ground no. 8.

5. Ground No. 13 relates to reallocating the expenses on account of business head office expenses of Rs. 25,38,000/- and thereby reducing the claim of deduction u/s 80IA by the same amount without appreciating the fact that the business head office expenses are directly related to the other businesses of the company. This ground covers assessee's appeal in ITA NO. 126/Ran/2015 Ground No. 10 and ITA No. 127/Ran/2015 Ground No. 9.

ITA No.126/Ran/2015 Assessee's appeal for assessment year 2009-10

1. Ground No.1.Ld CIT(A) erred in confirming the disallowance of Rs.4,41,172/- on account of installation of isolator breakers and Rs.2,91,572/- on account of installation of two lighting transformers treating them as capital expenditure. These expenses were incurred for general upkeep of the plant therefore should be allowed as revenue expenditure. This also covers Ground no.1 of Revenue's appeal in ITA No.136/Ran/15 for assessment year 2009-10, Ground No.1 of assessee's Cross-Objection No.19/Ran/2017 A.Y 2009-10, Ground No.1 of Revenue's appeal in ITA No.137/Ran/2015 A.Y 2010-11, Ground No.1 of assessee's Cross-Objection No.20/Ran/2017, A.Y 2010-11.

2. Ground No.11. Ld. CIT(A) erred in disallowing donation of Rs.1,51,000/- paid to Shri Dehati Sthapana Trust. The donation was claimed by assessee u/s 80G(V) of the Act.

4. Now we shall take these summarised grounds one by one: Summarized Grounds of Revenue Appeals

Summarised ground No. 1 raised by Revenue reads as follows:

Ground No. 1 : Addition u/s 40(a)(ia) of Rs. 45,17,640/- on account of payments made as consultancy charges to MsUdhe.

This ground also relates to Ground no. 1 of C.O. No. 18/Ran/2017.

5. At the outset itself, we note that this ground raised by the Revenue does not relate to assessment year 2008-09. Ld. Counsel for the assessee informs the Bench that this ground relates to assessment year 2007-08. We have examined the assessment order and order of ld. CIT(A) and noted that there is no any discussion about addition u/s 40(a)(ia) of Rs. 45,17,640/-, therefore, this ground does not relate to A.Y. 2008-09, hence we dismiss ground No. 1 raised by the Revenue.

6. Summarised ground No. 2 raised by Revenue reads as follows:

Addition under Rebate and claim of Rs. 78,00,190/- on account of payments made as rebates and claims, on the ground that it is unascertained liability and a provision. Ld. CIT(A) has given full relief after calling for remand report.

This ground also relates to Ground no. 2 of C.O. No. 18/Ran/2017, Revenue appeal in ITA No. 136/Ran/2015 for A.Y. 2009-10 Ground no. 2, Ground no. 2 of C.O. No. 19/Ran/2017 A.Y. 2009-10, Ground no. 2 of Revenue's Appeal in ITA NO. 137/Ran/2015 A.Y. 2010-11, C.O. No. 2 of Assessee's C.O. No. 20/Ran/2017A.Y. 2010-11.

7. Brief facts qua the issue are that this ground relates to addition of Rs. 78,00,190/- claimed under the head rebate and claim. The ld. AO during the course of assessment proceedings had asked the assessee to give the details of rebates and claims - Party wise details and reasons alongwith copy of ledgers. The ld. AO had also asked the assessee to explain the justification of debiting Rs. 79,95,000/- under the head "Rebates and claims" when the entry is provision for claim of customer (marketing liability 2007-08). The ld. A.O. on perusal of the submission had noted that the journal entry has been passed for the amount of Rs. 78,00,190/- debiting as rebates and claims. In support of this, journal voucher have been placed on record, in which the amount had been written as provision for claim of customer (marketing liability 2007-08) as rebates and claims, however, the explanation had not been offered that why the amount which is provision in nature should be allowed to be debited in the profit and loss account. Therefore, the Ld. A.O. due to the fact that the nature of the amount suggest that the amount was provision in nature, so the same had not been finalized during the year under consideration and still remains an unascertained liability, therefore, the said amount of Rs.78,00,190/-was disallowed and the added to the total income of the assessee company.

8. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the ld. CIT(A) who has deleted the addition made by the Assessing Officer observing the following:

"I have considered the submission of the appellant and perused the assessment order passed by the ld. A. O. and remand report of the ld. A. O. It is noted that Hindalco Industries Ltd. (HIL) is one of the major customers of caustic soda lye. It is also noted that the assessee company following volumetric method to weigh caustic soda lye which is appropriate method to weigh this type of product as per its technical team but Hindalco Industries Ltd follows simple weight bridge method to weigh caustic soda lye hence, differences arises in weights at both ends. Hindalco Industries Ltd accepts only that quantity which it receives at their end as per its weighment practice and payment releases only for quantity which it shown to receive. It is noted that the assessee has calculated the total short quantity (Net) received at their end during F.Y.2007-08 accumulated 86.88 MT which works out of total value of Rs.78.01 lakhs which is also evident from the ledger details of the Hindalco Industries Ltd. It is noted that liability taken in F.Y.2007-08 (A.Y.2008-09) was an ascertained liability. In view of these discussion, and on perusal of proper vouchers and details of such liability it is noted that the Ld. A.O. has

failed to appreciate these details and incorrectly disallowed the ascertained liability of Rs.78,00,190/- on account of rebate and claims. On the basis of this discussion the addition made by the Ld. A.O. cannot be sustained in appeal and is directed to be deleted. Accordingly, this ground of appeal of the assessee is allowed."

9. Aggrieved the order of the Id. CIT(A) the Revenue is in appeal before us.

10. The Id. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer which we have already noted in our earlier para and the same is not being repeated for the sake of brevity and on the other hand the Id. Counsel for the assessee has relied on the order of the Id CIT(A).

11. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials available on record. Learned Counsel has argued before us that rebate and claim is not a provision but a crystallized liability. The Id Counsel has also argued that rebate and claim account has been debited for rate differences, shortage of material at customer end, loss to customer due to delay in supply of caustic (i.e. retention expenses), poor quality of the product for which deductions have been made by the customers. Since the customers have deducted the amount while releasing the payment, hence all such deductions have been provided in the books of account of the company as expenses under the head rebate and claim. The Ld Counsel has also argued that all such deductions pertain to current year hence it was appropriate to provide liability in the current year itself. It has also been argued that once the company has accepted to indemnify the customers for any of the reasons mentioned above, the liability in the books of account has to be provided immediately though the customer account is finally credited in subsequent year. We note that the Ld. A.O. has erred in disallowing the ascertained sales liability of Rs.78,00,190/- supported by proper vouchers and details of such liability. That being so, we decline to interfere in the order passed by the Id. CIT(A), his order on this issue, is hereby upheld and the ground of appeal raised by the revenue is dismissed. The Cross Objection filed by Assessee is in support of the order of Ld. CIT(A). Since we uphold the order of Ld. CIT(A) in dismissing the Revenue's appeal and the Cross Objection filed by assessee is in support of the order of CIT(A), therefore, we dismiss the assessee's Cross Objection being infructuous.

12. Summarised ground No. 3 raised by Revenue reads as follows:

Addition on account of community welfare expenses Rs. 52,77,946/- on various heads on account of CSR expenses, community welfare exp. etc.

This ground also relates to Ground no. 3 of C.O. No. 18/Ran/2017, Ground no. 3 of Revenue's Appeal in ITA No. 136/Ran/2015 for A.Y. 2009-10, Ground no. 3 of C.O. No. 19/Ran/2017, Ground no. 3 of Revenue's Appeal in ITA No. 137/Ran/2015 A.Y. 2010-11, C.O. No. 3 of assessee's C.O. No. 20/Ran/2017 A.Y. 2010-11.

13. Brief facts qua the issue are that the Ld. A.O. during the course of assessment proceedings had observed that the assessee had debited expenses totalling to Rs.52,77,946/- under the head Welfare Expenses. The Ld. A.O. had issued show cause to the assessee to explain why expenses debited under this head was allowable particularly gift to employees, other staff welfare expenses, reimbursement of school fees etc.

The assessee had replied to the AO stating that these expenses are for the purpose of business. The AO has gone through the reply of the assessee and was of the view that these expenses were purely altruistic and philanthropic in nature and these expenses were not incurred wholly and exclusively for business purposes but have to be treated as application of income.

The Ld. A.O. on perusal of the submission of the assessee company had disallowed the following expenditures namely; (i) Festival celebration - Rs.6,36,292/-, (ii) Scholarship / Reimbursement of School Fee - Rs.2,87,370/-, (iii) Gift to employees - Rs. 16,62,709/-, (iv) Contribution to club - Rs.3,16,021/-, (v) Other staff welfare expenses - Rs.23,36,185/- and (vi) other workers welfare expenses - Rs.39,369/- totaling to Rs.52,77,946/-.

14. Aggrieved by the order of the Assessing Officer the assessee carried the matter in appeal before the ld. CIT(A) who has partly deleted the addition made by the Assessing Officer observing the following:

"I have considered the submission of the appellant and perused the assessment order as well as remand report of the Ld. A. O. All these additions are dealt with separately as under:-

i. Festival celebration Rs.6,36,292/-

The expenses claimed under this head have been disallowed /by the A.O. on the ground that these expenses are purely altruistic and philanthropic in nature and these expenses are not incurred wholly and exclusively for business purpose of the appellant Company. On perusal of the assessment order it is found that the expenses claimed under this has been made towards Celebration of national festival viz. 15th Aug. and 26th Jan and religious functions Viz. Vishwakarma Puja, Bakrid, organizing cultural programme and sports meet for employees of the Company. The A.O. simply disallowed the expenses claimed under this head on the ground that these expenses are not related to the business of the assessee.

I have carefully considered the appellant's contention as well gone through the assessment order passed by the A. O. The natures of expenses are such that it could be said to be related to the business activity of the appellant. Appellant is a Company located in very remote area and for smooth running of the business and for the welfare of the employees and their families, these expenses have been incurred. These expenses have been incurred for celebration at Company level in general without direct benefit to any individual employee or any specific group of employees therefore I am of the view that these expenses are relating to business and fully allowable. Thus, addition of Rs.6,36,292/- made under this head is deleted.

ii. Scholarship / reimbursement of school fee - Rs.2,87,370/-:-

The expenses claimed under this head have been disallowed by the A. O. on the ground that these expenses are purely altruistic and philanthropic in nature and these expenses are not incurred wholly and exclusively for business purpose of the appellant Company. The expenses claimed under this head have been disallowed by the A.O. on the ground that these expenses are not in relation to the business of the appellant Company. On perusal of the assessment order it is found that the expensed claimed under this has been made towards scholarship / reimbursement of school fee, Gross expenses under this head from the scholarship / reimbursement of school fee Rs.2,87,370/- has been claimed as deduction.

I have considered all the facts & circumstances of the addition and submissions made by the Ld. A.R. of the appellant and I find that the expenses claimed under this head are in the nature of business expenditure. It is the liability of the Company to provide basic facilities to the employees and their dependent, providing scholarship / reimbursement of school fee for the children of employees is also one of them. It is in the nature of staff welfare and also necessary for maintaining cordial industrial relation and harmony. In view of these facts the addition made by the A.O. is difficult to sustain in appeal and is directed to be deleted. In view of these facts the addition made by the A.O. is difficult to sustain in appeal and is directed to be deleted.

iii. Gift to employees - an addition of Rs. 16,62,709/-

This amount was disallowed by the Assessing officer on the ground that these expenses had no connection with the business of Company. As per details filed before the A.O., the gifts were found to have been given to the employees on the occasion of their marriage and on the occasion of marriage of their family member.

I have carefully considered the appellant's contention as well as observation of the Assessing Officer. The A. O. simply stated in the body of order that on verification these expenses have been considered not for the business purposes u/s 37 of the I. T. Act, 1961. The gifts paid were on the occasion of marriage and are not in the nature of regular payments & it was as per the agreement between the Management & Labour Trade Union of the Company. These types of payment boost up the moral of the employee, which ultimately result in higher productivity of Company. From the fact of the case it is evident that the expenses made under this head is in relation to business of the Company. While considering the appeal in the appellant's own case the Hon'ble ITAT Circuit Bench, Ranchi for A.Y.2003-04 and 2004-05 has allowed the expenses incurred on gift to employees. After considering all the facts & circumstances, the addition made by the A.O. on the similar ground cannot be sustained in appeal. Thus, addition made by the A.O. is not sustainable and the same is deleted.

iii. Contribution to club - Rs.3,16,021/-:

This amount was disallowed by the Assessing officer on the ground that these expenses had no connection with the business of Company. As per details filed before the A.O., it is evident that the assessee has not furnished any explanation in respect of the expenses of contribution to club.

I have considered the submission made the appellant and perused the assessment order of the Ld. A.O. From the details of expenses. It is noted that actual expenses amounting to Rs.3,16,021/- were incurred by the assessee through contribution to staff club formed for general recreation of the employees at the Plant site. The appellant submitted that the assessee Company is located in remote area & naxal infected area where there are no recreational facilities in & around the nearby locality. In order to retain the employees recruited from different locations, the Company has constituted staff/workers club for their recreational activities.

On careful reading of Appellant submission and assessment of need of these facilities which has been incurred for employees of the appellant I am of the opinion that it would be fair and reasonable if the addition made by the Ld. A.O. is restricted to 10% of the actual expenses claimed i.e. 3,16,021/- under this head which comes to Rs.31,602/-. Accordingly, this ground of appeal is partly allowed.

(v) Other staff welfare expenses - Rs.23,36,185/-

This amount was disallowed by the Assessing officer on the ground that these expenses had no connection with the business of Company. As per details filed before the A.O., the other staff welfare expenses were found to have been given to the employees tea and snacks within office and factory premises, stitching of official uniform, subsidy given to canteen where employees get meal during working hours, drugs & chemicals bought for first-aid-treatment under OHC, expenses incurred on shifting of furniture from one quarter to other etc.

I have considered the submission made by the appellant and perused the assessment order of the Ld. A. O. From the details of expenses, it is noted that the expenses met within office and factory premises for staff & officers in the form of tea and snacks, stitching of official uniform,

subsidy given to canteen where employee get meal during working hours, medicines & chemicals for OHC etc. These expenses which well not only help them to procure more business and attract people to work more efficiently in present as well as in future also. It is also to be noted that the allowability of expenses u/s 37(1) are that with a view to bring profits or monetary advantage either today or tomorrow, and where the expenditure incurred on promotion of his business prospectus subject to the expenditure being genuine and within reasonable limits. Since this issue was not disputed in the earlier years in assessee's case before the Ld. A.O. or Hon'ble ITAT, Circuit Bench, Ranchi and in view of above discussion it would be fair if the addition made by the Ld. A. O. under this head is restricted to 10% of the expenses claimed of Rs.23,36,185/- under this head which comes Rs.2,33,618/-. Accordingly, this ground of appeal partly allowed.

(vi) Other workers welfare expenses - Rs.39,369/-:

This amount was disallowed by the Assessing officer on the ground that these expenses had no connection with the business of Company. As per details filed before the A.O., the other worker welfare expenses were found to have been given to the workers employees tea, snacks, puja expenses, stitching charges of company uniforms company furniture's shifting from one quarter to another quarter, reimbursement of electricity bills as per union agreement etc for workers are cover under the head.

I have considered the submission made the appellant and perused the assessment order of the Ld. A.O. From the details of expenses, it is noted that the expenses met are similar nature to the expenses incurred for staff & officers mentioned above. And therefore addition made by the Ld. A. O. under this head is restricted to 10% of the expenses claimed of Rs.39,369/- under this head which comes Rs.3,937/-. Accordingly, this ground of appeal is partly allowed."

15. Aggrieved the order of the ld. CIT(A) the Revenue is in appeal before us and assessee is in cross objection before us.

16. The ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer which we have already noted in our earlier para and the same is not being repeated for the sake of brevity and on the other hand, the ld. Counsel for the assessee has defended the order passed by the ld CIT(A).

17. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the ld CIT(A) and other materials available on record. Learned Counsel has argued before us that all the expenses incurred under the head Welfare Expenses are related to employees who work for the organization and therefore, these expenses are business expenditure. The ld Counsel has also argued that gift to employees is a kind of incentives related to their performance which reflects from progress of the company and increase in production as per policy of the company. In respect of other staff welfare expenses, it has been submitted that these expenses are tea and snacks within office and factory premises, stitching of official uniform, subsidy given to canteen where employees get meal during working hours at concessional rate, reimbursement of school fees to workers is done as per agreement with the union and all these expenses are incurred by the company to retain and motivate the employees. The ld Counsel submitted that festival celebration is that various festivals like independence day, republic day, durga puja, vishwakarma puja etc. are celebrated for employees and their families. In respect of scholarship / reimbursements of school fee, ld Counsel has submitted that this is done as per agreement with workers union. In respect of gift to employees, the ld Coundel has submitted that for achieving targeted production all employees are given production gift as per policy of the company. The gift are also given to employees on marriage of their daughter / sons as per policy of the company and this motivates the employees to put their best effort for achieving higher level of production. As regards expenses on contribution to club, the appellant has argued that

the Ld. A.O. has wrongly disallowed the expenses under this head by Rs.3,16,021/-as the appellant has also stated that the company is located in remote area and naxal affected area where there are no recreational facilities in and around the nearby vicinity and the company has constituted staff/workers club for their recreational activities. These activities directly / indirectly act as motivational factor for the employees and it is an instrument to maintain the efficiency of the employees and without these facilities it will be very difficult to retain good employees as well as to get best efforts and productivity of the employees. As regards other staff welfare expenses, the Id Counsel has submitted that tea, snacks during office hours, stitching charges of company uniforms, drugs & chemicals bought for first-aid-treatment under OHC, company's furniture's shifting from one quarter to another quarter etc for staff is covered under this head of expenses. As regards expenses under the head other workers welfare expenses, the Id counsel has argued that tea, snacks, puja expenses, stitching charges of company uniforms, company's furniture's shifting from one quarter to another quarter, reimbursement of electricity bills as per Union agreement etc. for workers are covered under the head. The Id Counsel has also argued that company has paid Fringe Benefit Tax (FBT) on above welfare expenses incurred for employees of the company and expenses of similar nature has been allowed by ITAT, Ranchi in the previous year, hence there should not be any reason of disallowance by the A.O.

18. We note that Id CIT(A) has sustained 10% addition of the following expenditure:

- (i) Contribution to club Rs.31,602/-
- (ii) Other staff welfare Exp. Rs. 2,33,618/-
- (iii) Other workers" welfare expenses Rs. 3,937/-

We note that the AO could have ventured into estimation only after rejecting the books of accounts of the assessee u/s 145(3) and thereafter by best judgment assessment u/s 144 of the Act. Here in this case, the AO has not passed any order u/s 144 of the Act. The AO thus without rejecting the books of account of the assessee has gone for estimation on suspicion and conjectures that the assessee may be inflating its expenses. While scrutinizing the expenditure if the expenses claimed are not having any nexus to the business of the assessee or if there is deficiency in the vouchers or there is no bills supporting the incurrance of an expenditure, at the most expenses to the extent that are not supported by the vouchers can be held to be non-genuine and can be disallowed by the AO; and item-wise the AO could have disallowed the expenditure rather than going for adhoc disallowance of percentage basis of the expenses claimed by the assessee which action of the AO is arbitrary in nature and cannot be sustained. Therefore, we delete the following adhoc expenses sustained by the Id CIT(A).

- (i) Contribution to club Rs.31,602/-
- (ii) Other staff welfare Exp. Rs. 2,33,618/-
- (iii) Other workers" welfare expenses Rs. 3,937/-

Hence, we dismiss the appeals of Revenue and allow the cross objections filed by the assessee.

19. Summarised ground No. 4 raised by Revenue reads as follows:

Addition on account books and periodicals Rs. 37,74,696/-.

This ground also relates to ground no. 3 of C.O. No. 18/Ran/2017.

20. Brief facts qua the issue are that during the course of assessment proceedings on perusal of Annexure-H of the profit and loss account, the AO had observed that the assessee had incurred

'Miscellaneous Expenses' which were consisting of; i) Subscription - Rs. 13,49,087/-, ii) Books and periodicals - Rs.43,824/-, iii) ISO/WCM expenses - Rs.7,06,311/- and iv) HRD Recruitment Expenses - Rs. 10,20,033/- HRD Training Expenses to Rs.6,55,441/- totalling to Rs.37,74,696/- .The Ld. A.O. had observed that the above expenses were capital in nature and have enduring benefits, therefore, the Ld. A.O. had disallowed u/s 37(1) of the Income Tax Act, 1961 and added to the total income of the assessee.

21. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the Id. CIT(A) who has partly deleted the addition made by the Assessing Officer observing the following:

"I have considered the submission of the appellant and perused the assessment order passed by the Ld. A.O. The Ld. A.O. has made the additions under the head subscription fee amounting to Rs. 13,49,087/-, books and periodicals - Rs.43,824/-, ISO/WCM expenses - Rs.7,06,311/- and HRD recruitment & Training Expenses - Rs. 10,20,033/- & Rs.6,55,441/- totalling to Rs.37,74,696/- on the basis that these expenditures are purely capital in nature and having enduring benefits. All these additions are dealt with separately as under:-

(i) Subscription - Rs. 13,49,087/-

On perusal of the details submitted by the assessee company before the Ld. A. O. and before the appellate proceedings before this office it is noted that the expenses met by the assessee towards subscription to Society for Environmental Commission, High Tech Publishing Ltd., Annual Membership Subscription to National Safety Council, Annual Subscription Fee to Alkali Manufacturers Association, Chemical Weekly, Coal Consumer Association of India, Centax Publication Pvt. Ltd. - for Excise Law & ST Review, patron membership of Indian Chemical Council, National Safety Council - Jharkhand Chapter - Membership, Institute of Economic Studies, Labour Law Journal, Membership - Indian Economic Development Research Association, Nandini Chemical Journal etc. It is also noted that if expenditure is made for acquiring or bringing into existence an asset or advantage for the enduring benefit of the business, it is properly attributable to capital and is of the nature of capital expenditure. But if it is made for running the business or working it with a view to produce the profits, it is a revenue expenditure. The aim and object of the expenditure would determine the character of the expenditure whether it is a capital expenditure or a revenue expenditure. In view of the tests laid down, it was held that amount expended on subscription fee cannot be termed as a capital expenditure. It is also noted that in view of the details of the expenses claimed, it is observed that the assessee has claimed excessive under this head, and in view of these facts, the disallowance under this head is fair and reasonable to restrict @10% of the total expenses claimed being Rs. 1,34,909/- as against disallowance of Rs. 13,49,087/- made by the Ld. A.O. Accordingly, this ground of appeal is partly allowed.

ii) Books & Periodicals - Rs.43,824/-

On perusal of the details submitted by the assessee company before the Ld. A. O. and before the appellate proceedings before this office it is noted that the expenses met by the assessee towards books and periodicals in respect of purchase of insurance guide for material department of the assessee company and for MD office, newspapers for various department, Taxman's Ready Reckoner, Income Tax Act, Income Tax Rules, legal book for companies work etc. It is also noted that if expenditure is made for acquiring or bringing into existence an asset or advantage for the enduring benefit of the business, it is properly attributable to capital and is of the nature of capital expenditure. But if it is made for running the business or working it with a view to produce the profits, it is a revenue expenditure. The aim and object of the expenditure would determine the character of the expenditure whether it is a capital expenditure or a revenue expenditure. In view of the tests laid down, it was held that amount

expanded on books and periodicals cannot be termed as a capital expenditure. It is also noted that the assessee incurred expenditures under this head mainly on books related to taxation matter and various departmental books which is necessary for the appellant assessee. Therefore, addition made under this head cannot be sustained in appeal and is directed to be deleted.

iii) ISO/WCM Expenses - Rs. 7,06,311/-

It is noted that the Ld. A.O. treated the expenses on ISO/WCM are capital in nature and having enduring benefit and disallowed Rs.7,06,311/- under this head. It is also noted that the assessee company is an ISO-9000-2000 certified company and for achieving manufacturing excellence the company practice World Class Manufacturing (WCM) standards and expenses claimed under this head are related to ISO/WCM auditors for assessment, expenses on air ticket to auditors and expenses on guest house and photography charges to get certificate. I have considered arguments of the appellant and perused material available on record. It is noted that the assessee has claimed Rs.7,06,311/- as expenses for procuring ISO 9000-2000 certificates for meeting the requirement of the clients. This is being the periodic exercise to maintain international quality standards and international acceptance and demand in the product/services, the expenses thereon are revenue in nature. The AO however did not agree with the claim of the assessee and held that the expenses incurred towards ISO 9000 certification were sort of patent or copyright which are intangible assets and therefore any expenses incurred thereof are capital expenditure and required to be capitalized. The AO accordingly disallowed the claim of the assessee and added the same to the total income of the assessee. It is also noted that the expenses of ISO certificates are in the nature of regular business expenses and to meet with the market demands of recognition as to the standard quality material not bringing in any specific capital asset and regular and necessary expenses of such nature surely fall under revenue head and cannot be treated as separate capital asset and for allowing for depreciation thereon. Accordingly, it would be reasonable to allow the ISO expenses being certification expenses as revenue item and delete the disallowance in this regard. Reliance in this regard is placed on the case of Lubi Submersible Ltd., in ITA No. 1179/Ahd/2007 for A.Y.2004-2005 dated 26-2-2010 wherein the Hon'ble Tribunal had allowed similar claim by holding that the ISO 9000 expenses allowable as business expenditure under Section 37(1) of the Act. In view of these facts, the addition made by the Ld. A.O. cannot be sustained and is directed to be deleted.

iv) HRD Recruitment & Training expenses - Rs. 16,75,474/- [Rs. 10,20,033/- + Rs.6,85,441/-]

It is noted that the Ld. A.O. treated the expenses on HRD recruitment expenses are capital in nature and having enduring benefit and disallowed Rs. 16,75,474/- under this head. On perusal of the details furnished before the Ld. A.O. as well as in this office it is noted the assessee incurred expenditure for identification and recruitment of manpower that any expenditure on recruitment through manpower agencies. The Assessing Officer held that such an expense was nonrecurring and was is capital in nature. It is also noted that if expenditure is made for acquiring or bringing into existence an asset or advantage for the enduring benefit of the business, it is properly attributable to capital and is of the nature of capital expenditure. But if it is made for running the business or working it with a view to produce the profits, it is a revenue expenditure. The aim and object of the expenditure would determine the character of the expenditure whether it is a capital expenditure or a revenue expenditure. In view of the tests laid down, it was held that amount expended on subscription fee cannot be termed as a capital expenditure. Hon'ble Tribunal in the case of Dy.CIT Vs. Columbia Asia Hospitals (P) Ltd. (2013) 142 ITR 225 (Bang.) (Trib.) has held that the HRD recruitment expenses is allowable as revenue expenditure. Having regard to facts of the case the addition made by the Ld. A.O. cannot be sustained in appeal and is directed to be deleted."

22. Aggrieved by the order of the Id. CIT(A), the revenue is in appeal before us and assessee is in cross objection before us.

23. The Id. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer which we have already noted in our earlier para and the same is not being repeated for the sake of brevity and on the other hand the Id. Counsel for the assessee has defended the order of the Id CIT(A).

24. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials available on record. Learned Counsel has argued that the expenses are related to Insurance guide for Material Dept, and for MD office, News papers for various dept., taxman's Ready reckoner, Income tax Act, Income Tax Rules, legal books for Co's work etc. these expenses are purely of revenue nature. Regarding books and periodicals the Id Counsel has submitted that these expenses are related to books and periodicals purchased like insurance guide for material department and for MD office, newspapers for various department, taxman's ready reckoner, Income Tax Act, Income Tax Rules, Legal books for Company's work etc and these expenses are purely of revenue nature. As ISO/W CM expenses is concerned, the Id Counsel has argued that the company is an ISO 9000-2000 certified company and the company practice world class manufacturing excellence. It has also been stated that the expenses under this head are related to ISO/WCM auditors for assessment to give various certificates and awards like quality award 2007, green tech environment award 07, IMC RBNQ 07, Green tech safety award, DNV audit for ISO 9001-2000, OHSAS 18001, SA- 8000-2001 etc. these expenses are purely of revenue nature and are incurred every year. Regarding HRD recruitment expenses, the Id Counsel has argued that these expenses are related to recruitment of employees such as interview expenses, travelling for interview, advertisement for recruitment of new candidates, these expenses are purely of revenue nature. As regards, HRD Training expenses, these expenses are related to internal and external trainings of employees for their development, enhancement of their knowledge and skills to render better services to the company.

We note that Id CIT(A) has sustained the addition @10% of subscription expenses on adhoc basis of Rs. 1,34,909/-. We nota that in assessee's case under consideration the assessment is made by AO under section 143(3) of the Act and books of accounts of the assessee were not rejected by the assessing officer. We have already taken a view in para No.18 of this order that ad hoc disallowance should not be done by AO therefore we delete the adhoc addition sustained by CIT(A) of Rs.1,34,909/-.Hence, we dismiss the appeals of Revenue and allow the cross objections filed by the assessee.

25. Summarised ground No. 5 raised by Revenue reads as follows:

Addition on account of Gardening Expenses Rs. 89,97,609/-

This ground also relates to Ground no. 3 of C.O. No. 18/Ran/2017.

26. Brief facts qua the issue are that assessing officer during the course of assessment proceedings had observed that the assessee had claimed expenses totaling to Rs.89,97,609/- under the heads Gardening/Horticulture expenses, CSR expenses and Community welfare expenses. The Ld. A.O. had asked the assessee to substantiate its claim with documentary evidences. The Ld. A.O on perusal of the submission of the assessee had observed that the assessee had furnished the details in the form of ledger details, in which the expenditures are written as the various heads like programme coordination, social reforms, labour engaged, firm making charges, housekeeping for Adity Chikitshalaya, Indian Chemical Counsel, charges for making video film, gardening work etc. and not specific details had been furnished and merely saying that expenditures had been incurred for social reforms, infrastructural development, watershed development, programme coordination etc therefore AO took

the view that assessee had not discharged its onus of showing that expenditure has actually been incurred or not and even if incurred whether it is for the purposes of the business or not. The Ld. A.O. had also observed that the assessee company was incurred expenditure through the trust named "Jan Seva Trust", but on perusal of the records it was observed by A.O. that this trust is a separate entity altogether which had received registration u/s 12A, hence, any expenditure on this account for which work was carried out by a trust should actually be a donation in the hands of the assessee company and not business expenditure. The Ld. A.O. keeping in view of these facts, had disallowed expenditures namely; gardening/horticulture expenses - Rs.8,52,261/-, gift to others - Rs. 1,52,430/-, contribution to rural development - Rs.34,77,680/-, contribution for education Rs.18,11,380/-, community welfare expenses - Rs. 1,33,188/-, entertainment expenses (others) - Rs. 19,53,623/-, occupational health care expenses - Rs.2,30,637/-, and guest house expenses - Rs.3,55,343/- totaling to Rs.89,97,609/- on the basis that these expenditures are purely altruistic and philanthropic in nature.

27. Aggrieved by the order of the Assessing Officer the assessee carried the matter in appeal before the Id. CIT(A) who has partly deleted the addition made by the Assessing Officer observing the following:

"I have considered the submission of the appellant and perused the assessment order as well as remand report of the Ld. A.O. The Ld. A.O. has made the additions under the head horticulture expenses amounting to Rs. 8,52,261/-, gift to others of Rs. 1,52,430/-, contribution to rural development - Rs.34,77,680/-, community welfare expenses - Rs.1,33,188/-, entertainment expenses - Rs. 19,52,623/-, occupational health care expenses - Rs.2,30,637/-, rural development expenses - Rs.31,067/- and guest house expenses - Rs.3,55,943/- totaling to Rs.89,97,609/- on the basis that these expenditures are purely altruistic and philanthropic in nature and these expenses were not wholly and exclusively for business purposes but had to be treated as application of income. All these additions are dealt with separately as under:-

i. Gardening / Horticulture Expenses - Rs.8,52,261/-

It is noted that the expenditure incurred on horticulture expenses observing that the expenditure incurred on maintenance of greenery at plant and residential premises of the employees cannot be said to have been incurred for other than business purposes. It is seen that towards horticulture expenses the appellant claimed Rs.8,52,261/-. It is true that for keeping the environment pollution free greenery environment, plantation of trees, plants and their beautification is necessary and it is obligatory to such company who is running a chemical plant. It is noted that this expenditure is were incurred by the assessee in order to maintain green & pollution free environment at &around the plant premises. In the assessee's case Hon'ble ITAT, Circuit Bench, Ranchi in ITA No. 192/Ran/2008 and ITA No. 194/Ran/2008 for A.Yrs.2003- 04 and 2004-05 has allowed the appeal of the assessee. In view of this, the disallowance made by the Ld. A.O. cannot be sustained in appeal and directed to be deleted.

(ii) Gift to others - an addition of Rs. 1,52,430/-

This amount was disallowed by the Assessing officer on the ground that these expenses had no connection with the business of Company. As per details filed before the A.O., the gifts were found to have been given to the others being customers on the eve of Diwali and republic day.

I have considered the submission made by the appellant and perused the assessment order of the Ld. A. O. From the details of expenses, it is noted that actual expenses amounting to Rs. 1,52,430/- were incurred by the assessee as gift to others include sweets and dry fruits distributed among customers, suppliers and other business associates on occasion of Diwali and Republic Day.

On careful reading of Appellant submission and assessment of need of these facilities which has been incurred for employees of the appellant I am of the opinion that it would be fair and reasonable if addition made by the Ld. A.O. is restricted to 10% of the actual expenses claimed i.e. 1,52,430/- under this head which comes to Rs. 15,243/- . Accordingly, this ground of appeal of the assessee partly allowed.

(iii) Entertainment expenses (others) - an addition of Rs. 19,53,623/-

This amount was disallowed by the Assessing officer on the ground that these expenses had no connection with the business of Company. As per details filed before the A.O., the expenses incurred on customers, supplier and other business associates who visits to factory of the assessee and take snacks, foods etc. in the guest house. These expenses also include the entertainment of customers and suppliers of the Company during visits of Company officials for business purposes.

I have considered the submission made by the appellant and perused the assessment order of the Ld. A.O. From the details of expenses, it is noted that actual expenses amounting to Rs. 19,53,623/- were incurred by the assessee to provide snacks, foods etc. in the guest house to the customers, suppliers and other business associates who visits to the factory premises of the assessee company. On careful reading of appellate submission and assessment of ld. Assessing Officer it is noted that need of these facilities which has been incurred for customers, business associates etc. the appellant. I am of the opinion that it would be fair if the addition made by the Ld. A.O. is restricted to 10% of the actual expenses claimed i.e. 19,53,623/- under this head which comes to Rs. 1,95,362/-. Accordingly, this ground of appeal is partly allowed

(iv) Contribution to education & health care expenses - an addition of Rs.18,11,380/- & Rs.2,30,637/-

These amounts were disallowed by the Assessing officer on the ground that these expenses had no connection with the business of Company. As per details filed before the A.O., the expenses incurred on providing health care services to its employees and basic schooling to children of employees. I have considered the submission made the appellant and perused the assessment order of the Ld. A.O. From the details of expenses, it is noted that actual expenses amounting to Rs.20,42,017/- [Rs.18,11,380/- + Rs.2,30,637/-] were incurred by the assessee to provide basic occupation health care services to its employees and basic schooling to children of employees which is mandatory for the company to make provision for occupational health care under the Factories Act and all such expenses are incidental and ancillary for running a factory in such a remote location.

On careful reading of Appellant submission and assessment of Ld. A.O. it is noted that need of these facilities which has been incurred for employees of the appellant I am of the opinion that it would be fair and reasonable if addition made by the Ld. A.O. is restricted to 10% of the actual expenses claimed i.e.20,42,017/- under this head which comes to Rs.2,04,202/-. Accordingly, this ground of appeal is partly allowed.

v. Guest House expenses & Community Welfare -

This amount was disallowed by the Assessing officer on the ground that these expenses had no connection with the business of Company. As per details filed before the A.O., the expenses incurred on guest house expenses & community welfare expenses. I have considered the submission made the appellant and perused the assessment order of the

Ld. A.O. From the details of expenses, it is noted that actual expenses amounting to Rs.3,55,343 & Rs. 1,33,188 were incurred by the assessee to provide guest house & community welfare who may stay and take food.

On careful reading of Appellant submission and assessment of Ld. A.O. it is noted that need of these facilities which has been incurred for employees of the appellant I am of the opinion that it would be fair and reasonable if addition made by the Ld. A.O. are restricted to 10% of the actual expenses claimed i.e.3,55,343/- & Rs.1,33,188/- under these heads which comes to Rs.35,534/- & Rs. 13,318/-. Accordingly, this ground of appeal is partly allowed.

(v) Rural Development Expenses & Rural Development - an addition of Rs.31,067/- & Rs.34,77,680/-

This amount was disallowed by the Assessing officer on the ground that these expenses had no connection with the business of Company. As per details filed before the A.O., the expenses incurred on account of basic education in nearby villages viz. tailoring and teaching education & facilities, handicraft & candle making training etc., rural camps, eye cataract operations, family planning, Hydral tower for water availability, seed distribution & training etc. rural sports, development of canals, cattle shed, chaupal foundation etc.

I have considered the submission made the appellant and perused the assessment order of the Ld. A.O. From the details of expenses, it is noted that actual expenses amounting to Rs.31,067/- & Rs.34,77,680/-. On careful reading of Appellant submission and assessment of Ld. A.O. it is noted that Hon'ble ITAT Ranchi has allowed above nature of expenses of the company as business expenses in its order ITAT 192/Ran/2008 & 1961/194/Ran/2008 dated 29.06.2009, therefore, keeping this in view, the addition made by the Ld. A.O. cannot be sustained in appeal and directed to be deleted."

28. Aggrieved by the order of the Id. CIT(A) the revenue is in appeal before us and assessee is in cross objection before us.

29. The Id. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer which we have already noted in our earlier para and the same is not being repeated for the sake of brevity and on the other hand the Id. Counsel for the assessee has defended the order of Id CIT(A).

30. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials available on record. Learned Counsel has argued that the expenditures are not altruistic and philanthropic in nature and are wholly and exclusively for business purposes. In respect of the addition of gardening / horticulture expenses, the Id Counsel has argued that the company is engaged in production of hazardous chemicals hence, maintaining a green belt in and around the factory premises becomes essential. The company is also an ISO 9000/OHSAS 18001 certified company which requires neat and green environmental around the factory premises and therefore, the company maintains garden, do plantation etc in the company premises for smooth and healthy environment at the work place. Regarding expenses under the head gift to others, the Id Counsel has argued before the Bench that the gift given on account of marriages of contract workmen sons and daughter. The Entertainment expenses has incurred on customers, supplier and other business associates who visits to factory premises and take snacks, food etc. in the guest house. Regarding contribution to education and health and occupational health care expenses the Id counsel has argued that factory place is naxal affected place and no provision of medical health care and schooling of children of the employees and for this purpose the company incurs expenses under

this head. Regarding guest house expenses the assessee has argued that company is located in very remote area and fooding and lodging facilities are not available within 30 kms. of its factory, therefore, company operates a guest house for its business associates who may stay and take food. We delete the following adhoc disallowances sustained by the Id CIT(A), vide our detailed reasoning in para 18 of this order:

- (i).Gift to others Rs. 15,253/-
- (ii).Entertainment Expenses Rs. 1,95,362/-
- (iii).Contribution for education and health care expenses Rs. 2,04,202/-
- (iv).Guest House expenses Rs.35,534/-
- (v).Community welfare expenses Rs. 13,318/-

Hence, appeal of the Revenue is dismissed and cross objections of the assessee are allowed.

31. Summarised ground No. 6 raised by Revenue reads as follows:

Ld. CIT(A) has erred in deleting the addition made on account of excess sale value of power plant unit by taking the market rate and the actual cost of production. This ground covers ground no. 4 of Revenue's appeal in ITA No. 136/Ran/2015 for A.Y. 2009-10, cross objection no. 4 of assessee's C.O. No. 19/Ran/2017 for A.Y. 2009-10, Ground no. 6 of Revenue's appeal in ITA No. 136/Ran/2015 for A.Y. 2009-10, Ground no. 4 of Revenue's appeal in A.Y. 2010-11, Ground no. 6 of Revenue's appeal in ITA NO. 137/Ran/2015 A.Y. 2010-11, C.O. No. 4 of assessee's C.O. No. 20/Ran/2017 A.Y. 2010-11.

This ground is adjudicated by us with assessee's appeal in ITA No. 125/Ran/2015 for A.Y. 2008-09, therefore, no separate adjudication is required (vide summarized ground no. 2 of ITA No. 125/Ran/2015 for A.Y. 2008-09).

32. Summarised ground No. 7 raised by Revenue reads as follows:

"Ld. CIT(A) has erred in deleting the addition made on allocation of expenses to Power plant unit.

This ground covers ground no. 5 of Revenue's appeal in ITA No. 136/Ran/2015 for A.Y. 2009-10, cross objection no. 4 of assessee's C.O. No. 19/Ran/2017 for A.Y. 2009-10. Ground no. 5 of revenue's appeal in ITA NO. 137/Ran/2015 A.Y. 2010-11, C.O. NO. 5 of assessee's C.O. No. 20/Ran/2017 for A.Y. 2010-11.

33. Brief facts qua the issue are that Ld. A.O. during the course of assessment proceedings had observed that while claiming deduction u/s 80-IA for its unit for a captive power plant, assessee had taken into account common expenses / overhead attributable to this unit and had not accordingly apportioned these expenses in its profit and loss account. The Ld. A.O. had also observed that the assessee had not given any valid reason for not taking into account common expenses / overheads attributable to this unit. The Ld. A.O. had also observed that the expenses like sales promotions, sales overhead expenses, business head office expenses etc. are though incurred at corporate level/office but it is for the benefit of the entire company including all its units and constituents. The Ld. A.O. had also observed that the Director's sitting fees and Director's remuneration debited in profit and loss account of the company can be attributed to all its units as they take management decision on behalf of the entire company and their administrative and managerial controls extends to all their units including

units on which deduction u/s 80-IA have been claimed. In the case of Director's remuneration, the assessee company had apportioned in the case of captive power plant. In view of these discussions, the expenses were apportioned in proportion to the turnover and taken as expenses in the units for which deduction u/s 80-IA was claimed.

Sl.No.	Head of expenses	Total Amount	Apportioned amount pertaining to exempt units
1.	Director's remuneration	36,48,000/-	17,14,560/-
2.	Director's sitting fees	4,15,000/-	1,95,050/-
3.	Sales promotion	94,000/-	44,180/-
4.	Other sales overhead expenses	55,000/-	25,850/-
5.	Business head, office expenses	54,00,000/-	25,38,000/-
	Total	96,12,000/-	45,17,640/-

Accordingly, an addition of Rs.45,17,640/- as expenses in the hands of the exempt units reduces the profit claimed u/s 80-IA by the same amount and hence, the same was added back to the total income of the assessee company.

34. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the Id. CIT(A) who has partly deleted the addition made by the Assessing Officer observing the following:

"I have considered the submission of the appellant and perused the assessment order as well as remand report of the Ld. A.O. It is noted that the A.O. apportioned the expenses on principal unit and captive power plant unit on the ground that the assessee was claiming deduction u/s.80-IA in respect of captive power plant but there were certain services and amenities which were used by section 80-IA unit in order to enable to carry out day to day functioning and the financial management or related activities and these services were being provided by the head office of the assessee. The appellant had prepared separate profit and loss account for its captive power unit and steam generation Hydrogen boiler unit. It is also noted that expenses such as sales promotion, sales overhead expenses, business promotion/development expenses are attributable to those businesses whose products are sold in market, thus for the power and steam units whose productions are captively consumed, no allocation of marketing expense is required to be made as no marketing efforts are required for sale of products of such captive units. It is also noted that the assessee at the time of assessment proceedings has submitted before the Ld. A.O. that the Managing Director's remuneration has been debited proportionately in the profit and loss account of captive power plant while claiming deduction u/s 80- IA and in schedule '14' of the profit and loss account of captive power plant it is

mentioned as directors' remuneration. It is also noted that similarly, CSR expenses, employee's welfare expenses and other overhead and miscellaneous expenses directly related to power plant or having relevance to power plant are debited in power plant division and the same can be verified from profit and loss account of captive power plant. Therefore, it is claimed that as per the arrangement, the expenses are incurred specifically for chemical business, these expenses have no nexus with the power and steam units, therefore, no portion of this expenditure is allocated to power generating unit and these expenses are not in the nature of common corporate expenditure incurred for the benefit of all the units. Hence, reallocation done by A.O. on this account is erroneous and not justified. The stand of appellant is also supported by the judgment of Hon'ble Calcutta High Court in the case of Tide Water oil co (India) Ltd Vs CIT, 353 ITR 300 in which it was held that while directing that expenses incurred at Corporate office essentially for the eligible unit should be deducted, specifically observed that no other expenditure at the corporate level which is remotely or indirectly related should be taken into consideration and CIT Vs Hindustan Lever Ltd Madras High Court ITA No 219 of 2006 where The Madras High Court held that Common head office administrative expenditure necessary for running of the business and therefore, cannot be apportioned to the individual units before computing the deductions u/s 10B, 80HH 80I of Income Tax Act, 1961. In this regard it is noted that assessee is running captive power plant and generating electricity for consumption by the assessee's own chemical division. There is no third party sale to any other entity. Due to these peculiar facts of the case it is seen that expenditure which can be allocated to captive power plant should relate only to generation of electricity and management of power plant. In this regard it is noted that the Ld. A.O. has considered allocation of sales promotion expenses of Rs.94,000/- and other sales overhead expenses of Rs.55,000/- to the captive power plant. However, as per the details available it is seen there is not much basis for inclusion of these expenses in the expenditure of captive power plant as it is seen that the power generated is for in house use by the assessee and has not be marketed or sold to third party. In view of this addition made by the Ld. A.O. on these two expense heads is difficult to sustain in appeal and is directed to be deleted. As regards the other two heads of expenses is concerned i.e. Director's remuneration of Rs.36,48,000/- Director's sitting fees of Rs.4,15,000/- and Business Head Office Expenses of Rs.54,00,000/- these expenses need to be apportioned on the basis of the turnover of the assessee which the Ld. A.O. has done. Accordingly, the relocation and addition on account of expenses of Rs. 17,14,560/- and Rs. 1,95,050/- on account of Directors remuneration, Directors sitting fees and Business Head Office expenses done by the Ld. A.O. is upheld. In result the total addition of Rs.44,47,610/- is upheld as against addition of Rs.45,17,640/- made by the Ld. A.O. on this issue. Reliance in this regard is placed on the order of Hon'ble ITAT Delhi Bench in the case of NIITGIS Ltd. Vs. Department of Income Tax as delivered on 24th Feb., 2015 in ITA No.3077/D/2012. Accordingly, this ground of appeal of the appellant is partly allowed."

35. Aggrieved the order of the ld. CIT(A) the revenue is in appeal before us and assessee is in cross objection before us.

36. The ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer which we have already noted in our earlier para and the same is not being repeated for the sake of brevity and on the other hand the ld. Counsel for the assessee has defended the order of ld CIT(A).

37. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the ld CIT(A) and other materials available on record. Learned Counsel has argued that the company maintains separate books of accounts for 80-IA plant and other plants and all the expenses related to concerned plant are booked appropriately in the books of the same plant and these books of accounts are audited by the Statutory Auditors and certified by the management of company. It has also been argued that the apportionments of certain expenses made by the learned A.O.

between 80-IA and other plants is totally baseless and assumptive therefore another opportunity should be given to the assessee to explain the allocation of expenses to Power plant unit before the assessing officer. We have gone through the order of Id CIT(A) and note that there is no any infirmity in the order passed by him. That being so, we decline to interfere in the order passed by the Id. CIT(A), his order on this issue, is hereby upheld and the ground of appeal raised by the Revenue is dismissed. The Cross objection filed by the assessee on this issue is also dismissed.

38. Summarized Grounds of Assessee's Appeals

1. Ground nos. 1 to 9 raised by the assessee in respect of disallowance of various expenses on ad hoc basis. This ground covers assessee's appeal in ITA No. 126/Ran/2015 Ground no. 2 to 7, ITA No. 127/Ran/2015 Ground no. 1 to 6.

39. At the outset itself we note that the AO could have ventured into estimation only after rejecting the books of accounts of the assessee u/s 145(3) and thereafter by best judgment assessment u/s 144 of the Act. Here in this case, the AO has not passed any order u/s 144 of the Act. The AO thus without rejecting the books of account of the assessee has gone for estimation on suspicion and conjectures that the assessee may be inflating its expenses. While scrutinizing the expenditure if the expenses claimed are not having any nexus to the business of the assessee or if there is deficiency in the vouchers or there is no bills supporting the incurrence of an expenditure, at the most expenses to the extent that are not supported by the vouchers can be held to be non-genuine and can be disallowed by the AO; and item-wise the AO could have disallowed the expenditure rather than going for adhoc disallowance of percentage basis of the expenses claimed by the assessee which action of the AO is arbitrary in nature and cannot be sustained. We have already deleted the following adhoc expenses while adjudicating respective revenue's appeal:

Nature of Expenses	Expenses Claimed	Amount confirmed by Ld. CIT(A) 10%
Contribution to club	3,16,021/-	31,602/-
Staff welfare	23,36,185/-	2,33,618/-
Worker welfare	39,369/-	3,937/-
Gift to other employees	1,52,430/-	15,243/-
Entertainment expenses	19,52,623/-	1,95,362/-
Education and health care	20,42,027/-	2,04,202
Guest house	3,55,343/-	35,534/-
Community welfare	1,33,188/-	13,318/-

Subscription	13,49,087/-	1,34,909/-
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Since these adhoc disallowances have already been deleted by us therefore no any separate adjudication is required.

40. Summarised ground No. 2 raised by the assessee reads as follows:

2. Ground no. 10 raised by the assessee relates to disallowance of claim of deduction u/s 80IA of Rs. 43,10,307/- on account of adjustment to the market price by reducing the electricity duty without appreciating the fact that electricity duty is a part of the market price if the same is purchased from outside. This ground covers assessee's appeal in ITA NO. 126/Ran/2015 ground no. 8, ITA No. 127/Ran/2015 Ground no. 7.

41. When this appeal was called out for hearing, the Id. Counsel for the assessee invited our attention to the order dated 18.11.2019, passed by the Tribunal in assessee's own case in I.T.A. Nos. 116 & 117/Ran/2015, for assessment years 2006-07 & 2007-08, whereby the issue of adjustment to the market price by reducing the electricity duty has been discussed and adjudicated in favour of assessee. The Id. Counsel submitted that the present issue is squarely covered by the above said order of the Tribunal, a copy of which is also placed before the Bench.

42. The Id. DR relied upon the orders of the authorities below.

43. We see no reason to take any other view of the matter then the view so taken by the division bench of this Tribunal in assessee's own case vide order dated 18.11.2019. In this order, the Tribunal has inter alia observed as under:

"11. Apropos Ground No.8 of appeal of the assessee, briefly stated the relevant facts of the case are like this. During the assessment proceedings, the Assessing Officer noticed that the assessee claimed deduction u/s. 80- IA for its unit of a captive power plant amounting to rs.16,58,48,283/- (restricted to Rs.13,47,08,499/-) for assessment year 2006-07. The AO also observed that the assessee for its power plant had taken sale value amounting to Rs.61,39,17,000/-, which had been arrived at by taking the tariff rate of JSWEB @ Rs.3.6158/ unit. Therefore, the Assessing Officer required the assessee to give reason/justification of valuation of power produced on the basis of JSEB rate. After considering the submission of the assessee, the AO relying on sub-section(5) of Section 80IA, observed that the word derived from cannot have a wide import and derivation of income must be directly connected with the business in the sense that the income is generated by the business. Thereafter the Assessing officer referred to sub-section (8) of Section 80IA, observed that it was clear that one had to take the consideration at the market value which in relation to any goods or services, means the price that such goods or services would ordinarily fetch in the open market. The AO observed that the energy rate of JSEB inherently not only takes into account its cost of production but also its level of efficiency or inefficiency and there is also transmission and distribution losses embedded in its tariff rate. The Assessing Officer observed that the cost of production of power has to be assumed at Rs.2.5 per unit and the same may be revised later, if the assessee furnishes details of its cost of production of power alongwith necessary evidence. Accordingly, he disallowed the difference between the sale consideration which reduces the profit claimed u/s.80IAS of the Act by the same amount i.e. Rs.61,39,17,000/- (sale value of captive power plant - Rs./50,93,61,969/- (correct sale consideration of power) = Rs.10,45,55,034/- to the total income of the assessee.

12. On appeal, the CIT(A) has given part relief to the assessee. Hence, both the sides are in appeal before us.

13. Ld counsel for the assessee submitted that the CIT(A) has allowed the claim of the assessee partly by calculating the market price of electricity after reducing the duty paid therein. Ld counsel submitted that as per the decision of ITAT Kolkata 'C' Bench dated 24.8.2016 in the case of Graphite India Ltd vs ACIT, in ITA Nos.304-305/Kol/2008 for A.Y. 2003-04, no such disallowance regarding duties can be made. Ld counsel vehemently pointed out that it is a settled position of law that the rate of electricity is to be calculated at the rate of State Electricity Board and despite that the CIT(A) has accepted all the contentions of the assessee in this regard and partly confirmed the addition, particularly the amount of difference and tax thereon which is not sustainable in view of the decision of Hon'ble Chhatisgarh High Court in the case of CIT vs. Godawari Power & Ispat Ltd, order dated 2.8.2013 (2014) 42 taxmann.com 551 (Chhatisgarh).

14. Replying to above, ld CIT DR contended that the CIT(A) has granted relief to the assessee without any basis and the Assessing Officer was right in making the addition by observing that the cost of production of power has to be assumed at Rs.2.5 per unit and the same may be revised later, if the assessee furnishes details of its cost of production of power along with necessary evidence. Ld CIT DR submitted that the AO was right in making the addition of the amount of difference between the sale consideration which reduces the profit claimed u/s. 80IA of the Act by the same amount. Ld CIT DR also submitted that Ground No.3 of appeal of the revenue for assessment year 2006-07 has to be taken into consideration while deciding Ground No.8 of appeal of the assessee. Ld CIT DR pressing said Ground No.3 of revenue submitted that the assessee has calculated the sales of its steam boiler unit at production cost + 20% mark up but in the case of its power plant instead of taking the same logic, the assessee has taken sale value of Jharkhand State Electricity Board (JSEB) as its sale rate which is not correct. Ld CIT DR submitted that the CIT(A) was not right in deleting the said addition on the ground that the value should be taken at market value of goods as per State Electricity Board. Ld CIT DR submitted that there is no justified reason or basis in the CIT(A) 's order as to why sale value could not have been taken as cost of production + 20% mark up instead of taking JSEB value which includes transmission cost, operational cost/insufficiency of JESB which has no bearing to the exempt plant of the assessee. Ld CIT DR also submitted that the CIT(A) on one hand while deciding the issue of expenses allowable of the power plant unit has held that no expenses which are remotely or directly related to power plant unit like corporate office expenses, common head office expenses etc can be taken into consideration and on the other hand has allowed expenses in the sale value of power plant which are not at all related to the unit. Ld CIT DR submitted that the part addition confirmed by the CIT(A) should be upheld and order of the CIT(A) deleting the part addition may kindly be set aside by restoring that of the order of the Assessing Officer.

15. Placing rejoinder to above, ld Counsel for the assessee drew our attention to paragraph No.9.4 of the CIT(A)'s order and submitted that the CIT(A) has granted relief to the assessee after considering the entire facts and circumstances of the case by relying on the decision of Mumbai Benches of the Tribunal in the case of West Coast Paper Mills Ltd., 286 ITR 252 (Mum), wherein, the issue has been adjudicated elaborately and after considering all surrounding facts and circumstances of the case part relief has been granted to the assessee. Ld counsel reiterating its earlier submissions, submitted that the Hon'ble Chhatisgarh High Court in the case of Godawari Power & Ispat Ltd (supra) has categorically held that where the assessee had established captive power plant to supply electricity to its manufacturing unit for the purpose of section 80IA of the Act, deduction market value of power supplied by assessee to steel division should be computed considering rate of power charged by State Electricity Board for supply of electricity to other industrial consumers. Ld counsel also drew our attention to

para 10 of the order of ITAT Kolkata Bench in the case of Graphite India Ltd (supra) and submitted that after considering all relevant decisions of Hon'ble High Court including the decision of Hon'ble Gujarat High Court in the case of CIT vs. Shah Alloys Ltd in Tax Appeal No.2092 of 2010 dated 22.11.2011, it was held that the market value of electricity which comprises of a component of electricity duty has to be taken into consideration for determining the market value for a consumer and out of electricity charges calculated by State Electricity Board, the duty is passed to the Government and this would make no difference. Therefore, not only the relief granted by the CIT(A) should be upheld but part addition confirmed by the CIT(A) pertaining to the electricity duty should also be allowed to the assessee.

16. On careful consideration of the rival submissions, first of all, we find it appropriate and necessary to reproduce the relevant operative para 9.4 of the CIT(A)'s order, wherein, he has allowed part relief to the assessee and partly confirmed the difference of Rs.33,95,748/- between the sale price as per books and as per working noted in the CIT (A)'s order to calculate the profit earned by 80IA eligible unit as under: "9.4. I have considered the submission of the appellant and perused the assessment order as well as remand report of the Ld. A.O. It is noted that the company has claimed deduction u/s 80-IA for its unit of a captive power plant amounting to Rs. 16,58,48,283/- for A.Y.2006-07 and for its power plant it has taken sale value amounting to Rs.61,39,17,000/- which has been arrived by taking the tariff rate of JSEB @Rs.3.6158 per unit. It is noted that the appellant has computed deduction to the tune of Rs. 16,57,98,146/- as profit generated from the captive power plant and the computation is done by adopting the transfer price of power captively consumed at Rs.3.61 per unit which is the rate at which power is supplied by Jharkhand State Electricity Board to industrial consumers in the State of Jharkhand and the appellant since importing power from Jharkhand State Grid only has therefore, adopted the same as transfer price for captive supply of power to its chemical division as per the provisions contained in Section 80-IA(8) of the I. T. Act, 1961. It is noted that the Ld. A.O. had instead of accepting that price had adopted an adhoc rate of 2.5 per unit as cost of production of power plus 20% mark up profit. It is noted that provisions of Section 80-IA(8) of the I. T. Act, 1961 has states "where any (goods or services) held for the purposes of the eligible business are transferred to any other business carried on by the assessee, or where any (goods or services) held or the purposes of any other business carried on by the assessee are transferred to the eligible business and, in either case, the consideration, if any, for such transfer as recorded in the accounts of the eligible business does not correspond to the market value of such (goods and services) as on the date of transfer then for the purpose of the deduction under this section, the profits and gains of such eligible business shall be computed as if the transfer, in either case, had been made at the market value of such goods or services as on that date.

Provided that where, in the opinion of the A.O. the computation of the profits and gains of the eligible business in the manner hereinbefore specified presents exceptional difficulties, the A.O. may compute such profits and gains on such reasonable basis as he may deem fit. Explanation - For the purpose of this sub-section, 'market value', in relation to any goods or services means the price of that such goods or services would ordinarily fetch in the open market." As per the above sub-section, it is clear that in case of transfer of goods and services between eligible unit and other businesses of the assessee, the transfer pricing of goods and services for computing deduction under section 80-IA of eligible business should be market value of goods and services at which the goods or services can ordinarily be sold in the open market. It is noted that Jharkhand State Electricity Board in the State of Jharkhand authorized by the State Government to supply power to various consumers in the state and appellant company is too as industrial consumer is buying power from JSEB at a rate of 3.61 per unit. It is also noted that the appellant has argued that had it not been generating power from its captive power plant for its own consumptions, the same power would have been purchased from JSEB at a rate of 3.61 per unit. Further, it is also noted that for adaptation of cost plus mark up as transfer pricing for

power, the A.O. has relied on the decision of Bombay High Court in the case of Atul Durga House Ltd. 211ITR 604, it is important to mention here that the decision was given in the context of claim u/s 80J of the Income Tax Act 1961 as applicable prior to 1.4.1976 and the said section was not containing any provision similar to sub-section 8 of section 80-IA which requires computation of profits by taking market value of goods transferred from eligible unit to another unit. The present case is clearly distinguishable as the sub section 8 of Section 80-IA clearly mandates the adoption of market price for inter unit transfers. Thus adoption of cost plus mark up is clearly in contradiction of sub section 8 of section 80-IA. It is also noted that the Ld. A.O. has also mentioned M/s. Damodar Valley Corporation as power supplying company in the state. If M/s. Damodar Valley Corporation is supplying power to industrial consumers, A.O. did not say at what price DVC is supplying powers to industrial consumers. Further, if more than one market price is available, the market price chosen by the assessee should be accepted as transfer price for the purpose of computing claim u/s 80-IA. For generation and captive consumption of steam, A.O. has adopted cost plus method for determining the transfer price of steam captively consumed and that is justifiable as no market price of steam was available with appellant as well as A.O. Thus, A.O. has applied cost plus mark up method to compute profit on captive consumption of steam. However, adopting the same method in case of captive consumption of power is not at all justified keeping in view market price of power is readily available in market. It is also noted that in the case of CIT Vs Godavari Power & Ispat Ltd (42 Taxman.com 551) the Chhattisgarh High Court in the similar case has held "Assessee is manufacturer of iron and steel, had established a captive power plant in State of Chhattisgarh to supply electricity to its steel division. It had sold power to steel division at same rate, which was charged by Chhattisgarh State Electricity Board for supply of electricity to industrial consumers. Assessee claimed deduction u/s 80-IA. The A.O. has computed market value of power supplied by assessee to steel division by taking into account rate charged by Chhattisgarh Electricity Company Limited, Raipur for supply of electricity to Board.

The Court 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 a consumer the Steel Division could have purchased power in the open market. In our opinion, the A. O. 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 also noted that in the case of CIT Vs. Kanoria Chemicals & Industries Ltd the Hon'ble Kolkata High Court in ITA No.58 of 2013 has held "we find that the price at which State Electricity Board sells electricity to industrial consumers is representative of the price that electricity would ordinarily fetch in the open market and i.e. the price has been adopted by the assessee for the electricity generated by the eligible business transferred to its other business for the purpose of computation of profits and gains of the eligible business in terms of Section 80-IA(8) of the Act."

In this regard it is noted that the Hon'ble Mumbai Tribunal in the case of the West Coast Paper Mills Ltd. Vs. Asstt. Commissioner of Income Tax [2006] 103 ITD 19 MUM [2006] 286 ITR 252 MUM has noted that the rate to be adopted for the power generated and supplied to assessee's paper division for the purpose of working of the profit for the purpose of 80IA of the Income Tax Act would be linked to the purchase price of power paid by the assessee to KSEB. The Hon'ble Tribunal concluded that the price should be worked out on the basis of average unit price of power purchased by assessee from KSEB during the whole year minus certain extraneous charges such as electricity duty etc. which is not connected to the business of the assessee. Applying these guidelines of Hon'ble Mumbai Tribunal to the present case it is seen

that assessee has purchased power from JSEB at the average rate of Rs.3.6158 unit. This price paid included the electricity duty of 2 paise per unit. This duty is nowhere connected with business of assessee and thus cannot be made part of working of unit price for the purpose of 80-IA of electricity. In view of this the correct tariff of Rs.3.5958/ unit (Rs.3.6158 - Rs.0.02/unit) is required to be adopted as price of power for the working of eligible profits of 80IA unit. The assessee has shown sale of power as per profit and loss account of captive power plant at Rs. 61,39,17,000/- and the total units produced were Rs.16,97,87,322/- units value of JSEB rate of Rs.3.6158 /unit. On these units electricity produced the correct sale consideration for 80-IA purpose would be 16,97,87,322 units x Rs.3.5958/unit = Rs.61,05,21,252/-. The assessee has taken this amount to be Rs.61,39,17,000/- in the books of accounts. The difference of Rs.33,95,748/- (Rs.61,39,17,000/- - Rs.61,05,21,252/-) between the sale price as per books and as per above working reduces the profit earned by the 80IA eligible unit to that much level and to that extent addition made by the Ld. A.O. is upheld. Accordingly, the addition made by the A.O. is directed to be restricted to Rs.33,95,748/- as per the above working. Accordingly, this ground of appeal of the assessee is partly allowed."

17. From the relevant part of the assessment order at page 8, we further observe that the Assessing Officer in the top para, observed as under: "The assessee was requested to furnish its cost of production of power but no details have been furnished by the assessee company. Hence, the cost of production of power is assumed at Rs.2.5 per unit and the same may be revised later if the assessee furnishes details of its cost of production of power alongwith necessary evidence. The sale consideration of power is therefore shown as below:

Sale value of power as per P&L a/c of Captive Power Plant: Rs.61,39,17,000/- Tariff rate of JSEB:-361.58 paise/unit(net energy rate applicable to assessee company)

Therefore total unit produced : - Rs.16,97,87,322/- Therefore correct sale consideration of power :-16,97,87,322 x(2.5+20%) = Rs.50,93,61,966/- The difference of Rs.10,45,55,034/- (Rs.61,39,17,000 - Rs.50,93,61,966) between the sale consideration reduces the profit claimed u/s.80IA by the same amount and hence the same is added back to the total income of the assessee company."

18. In view of above observation of the AO, it is clear that even at the time of framing of assessment order and making addition, the AO was not sure about the cost of production of power and he assumed the same at Rs.2.5 per unit with a rider that same may be revised later if the assessee furnishes details of cost of production of power alongwith necessary evidence. Be that as it may, from the order of the Hon'ble Chhattisgarh High Court in the case of Godawari Power &Ispat Ltd., (supra), we observe that Their Lordships speaking for the Hon'ble High Court explicitly held that where the assessee had established a captive power plant to supply electricity to its Steel Division, then for the purpose of section 80IA of the Act, deduction of market value of power supplied by assessee to Steel Division should be computed considering rate of power charged by Chhattisgarh State Electricity Board for supply of electricity to industrial consumers. Further, ITAT Kolkata in its order in the case of Graphite India Ltd (supra) referring to the decision of Hon'ble Gujarat High Court in the case of Shah Alloys Ltd (supra) held that the market value of electricity supplied by the State Electricity Board to other consumers has to be taken as benchmark for computation of deduction u/s. 80IA for an assessee.

19. In the present case, it is not in dispute that the assessee has established a captive power plant to supply power to its units eligible for deduction u/s. 80IA of the Act. It is also not in dispute that at that point of time, JSEB was charging average rate of 3.6158 per unit from other industrial consumers. In view of above, we have no hesitation to hold that the Assessing Officer picked the rate of 2.5 per unit without any basis with a rider that same may be revised on

furnishing of evidence by the assessee and during the first appellate proceedings, the CIT(A) considering the entire facts and circumstances of the case and some other glaring facts including that of JSEB is charging average rate of 3.6158 per unit from other similar consumers, took the same for the purpose of granting relief to the assessee. However, the CIT(A) accepted the contention of the assessee but did not allow entire relief to the assessee and partly confirmed the addition to the tune of Rs.33,95,748/- by taking into consideration that the price charged by the State Electricity Board is inclusive of electricity duty of 2 paise per unit.

20. As we have noted above that Hon'ble High Court of Chhattisgarh in the case of Godawari Power & Ispat Ltd (supra), ITAT Kolkata in the case of Graphite India Ltd (supra) has held that the rate charged by State Electricity Board has to be taken into consideration while calculating deduction for 80IA eligible unit and electricity duty has no relevance for calculating the same. On the basis of foregoing discussion, we reached to a logical conclusion that the CIT(A) was right in granting part relief to the assessee but was not correct in confirming part addition considering the factum of 2 paise per unit for working out eligible profits u/s. 80IA of the Act. Consequently, the findings of the CIT(A) granting relief to the assessee are confirmed and the addition partly confirmed pertaining to the electricity duty being devoid of merits is directed to be deleted. Hence, Ground No.8 of the assessee is allowed and Ground No.3 of revenue is dismissed."

44. As the issue is squarely covered in favour of the assessee by the decision of Co-ordinate Bench in assessee's own case (supra) in I.T.A. Nos. 116 & 117/Ran/2015 for A.Ys. 2006-07 & 2007-08, and there is no change in facts and law and the Revenue is unable to produce any material to controvert the above said findings of the Co-ordinate Bench. Therefore, respectfully following the decision of Co-ordinate Bench we allow grounds of appeal raised by the assessee.

45. Summarised ground Nos. 3, 4 & 5 raised by the assessee reads as follows:

3. Ground no. 11 raised by the assessee relates to reallocating the expenses on account of directors remuneration of Rs. 17,14,560/- and thereby reducing the claim of deduction u/s 80IA by the same amount. Since this expense is already shared between 80IA plant and other plant, hence there is no question of again sharing the same expenses to 80IA plant.

4. Ground no. 12 raised by the assessee relates to reallocating the expenses on account of directors sitting fees of Rs. 1,95,050/- and thereby reducing the claim of deduction u/s 80IA by the same amount. This ground covers assessee's appeal in ITA No. 126/Ran/2015 ground no. 9, ITA NO. 127/Ran/2015 Ground no. 8

5. Ground no. 13 relates to reallocating the expenses on account of business head office expenses of Rs. 25,38,000/- and thereby reducing the claim of deduction u/s 80IA by the same amount without appreciating the fact that the business head office expenses are directly related to the other businesses of the company. ITA NO. 126/Ran/2015 Ground no. 10, ITA No. 127/Ran/2015 Ground no. 9.

46. When this appeal was called out for hearing, the Id. Counsel for the assessee invited our attention to the order dated 09.01.2018, passed by the Hon'ble Bombay High Court in assessee's own case in I.T.A. No. 111 of 2015. The Id. Counsel for the assessee submitted that the present issue is squarely covered by the above said order of the Hon'ble High Court, a copy of which is also placed before the Bench.

47. The Id. DR for the Revenue has relied upon the orders of the authorities below.

48. We see no reason to take any other view of the matter than the view so taken by the Hon'ble High Court in assessee's own case vide order dated 09.01.2018. In this order, the Hon'ble High Court has inter alia observed as under:

"4. Re. Question 3:

a) We note that the impugned order of the Tribunal has allowed the appeal of the Respondent - Assessee by following the order of its co-ordinate Bench in respect for assessment year 2002-03 by applying its rationale to disallow the allocation of head office expenses to profits derived from 100 per cent export oriented units falling under Section 10B of the Act. The same reasoning was extended to hold that the head office expenses cannot be allocated out of profits derived from units claiming deduction under Section 80IA and 80IB of the Act.

b) The Revenue is unable to show why the adoption of the reasoning to disallow allocation of profits of Section 10B units to head office expenses cannot be extended to profits of Section 80 IA and 80 IB units.

c) The Appeal of the Revenue from the order of the Tribunal for assessment year 2002-03 to this Court being Income-Tax Appeal No. 311 of 2015 against the same Respondent-Assessee on the issue of allowing head office expenses to profits derived under Section 10B of the Act was disallowed today by a separate order in Income Tax Appeal No.311 of 2005. In the absence of the Revenue's not being allowed to show why the same logic would not extend to units claiming deduction under Section 80IA and 80IB of the Act, we are following the same.

d) In the above view, this question does not give rise to any substantial question of law. Thus, not entertained.

5. Re. Question 4:-

a) Mr. Tejveer Singh very fairly states that the issue herein was also raised by the Revenue in its Income Tax Appeal No. 311 of 2015 in respect of the same Respondent-Assessee relating assessment year 2002-03. We have by an order passed today not entertained the Income Tax Appeal No. 311 of 2015 on this issue / question.

b) Accordingly, for the reasons mentioned in our order passed today in Income Tax Appeal 311 of 2015, this question does not give rise to any substantial question of law. Thus, not entertained.

6. Appeals admitted on substantial question of law at (1) above.

7. Respondents waive service.

8. Registry is directed to communicate a copy of this order to the Tribunal. This would enable to keep papers and proceedings relating to the present appeals available, to be produced when sought for by the Court."

49. As the issue is squarely covered in favour of the assessee by the decision of the Hon'ble High Court in assessee's own case (supra) in I.T.A. No. 111 of 2015, and there is no change in facts and law and the Revenue is unable to produce any material to controvert the above said findings of the Hon'ble High Court. Therefore, respectfully following the decision of Hon'ble Bombay High Court, we allow grounds of appeal raised by the assessee.

50. Now we shall take in ITA No.126/Ran/2015, Assessee's appeal for assessment year 2009-10, summarized ground is reproduced below:

Ground No.1 Ld CIT(A) erred in confirming the disallowance of Rs.4,41,172/- on account of installation of isolator breakers and Rs.2,91,572/- on account of installation of two lighting transformers treating them as capital expenditure. These expenses were incurred for general upkeep of the plant therefore should be allowed as revenue expenditure. This also covers Ground no.1 of Revenue's appeal in ITA No.136/Ran/15 for assessment year 2009-10, Ground No.1 of assessee's Cross-Objection No.19/Ran/2017 A.Y 2009-10 Ground No.1 of Revenue's appeal in ITA No.137/Ran/2015, A.Y 2010-11 Ground No.1 of assessee's Cross-Objection No.20/Ran/2017, A.Y2010-11.

51. Brief facts qua the issue are that during the assessment proceedings, the assessing officer noticed that assessee had debited to its profit and loss account, the following expenses, under the head "repairs and maintenance":

1. Installation of Isolator breakers of improved rating Rs. 4,41,122.75

2. Installation of two lighting transformers Rs. 2,91,522.00

The assessing officer was of the view that these expenses should be capital in nature. The assessee argued before the AO, that installation of isolator breakers of improved rating are in the nature of current repairs and maintenance. The installation of two lighting transformers has been done to make it suitable for smooth operation of the plant. However, the Id AO was of the view that the all above expenditures were indicative of either used for enhancement of the capacity of the plant or used for enhancement of quality of production of the plant. Therefore, the said expenditures cannot be treated as revenue in nature and so can not be allowed as 'Repair & Maintenance Expenses', therefore, the said expenditures were disallowed and added back to the income of the assessee.

52. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the Id. CIT(A) who has confirmed the addition made by the Assessing Officer observing the following:

"As regards addition made by the Ld. A.O. on installation of isolator breakers of improved rating of Rs.4,41,122.75 and installation of two lighting transformers of Rs.2,91,522/-. It is noted that these expenses were incurred on repair and maintenance of building within the plant premises and repairs and maintenance of plant and machinery and other assets. It is also noted that the assessee has made addition to capital assets as these were new equipments installed and by incurrance of these expenses, had created capital assets. It is also noted that repairs may involve replacement of some part by which the assets is made as efficient as it was before or as close to it as possible but here these two new assets namely; installation of isolator breakers and installation of two lighting transformers have been created and expenditure incurred on these is of capital nature. In view of these facts, it is noted that expenses incurred by the appellant company is of the nature of capital expenses and the Ld. A.O. had rightly disallowed these two expenses and there is no cause of interference with the action of the Ld. A.O."

53. Aggrieved the order of the Id. CIT(A) the assessee as well as Revenue are in appeal before us.

54. The Id. Counsel for the assessee has relied on the submissions made before the authorities below and on the other hand the Id. DR has primarily reiterated the stand taken by the Assessing Officer which we have already noted in our earlier para and the same is not being repeated for the sake of brevity.

55. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials available on record. We note that if expenditure is made for acquiring or bringing into existence an asset or advantage for the enduring benefit of the business, it is properly attributable to capital and is of the nature of capital expenditure. But if it is made for running the business or working it with a view to produce the profits, it is a revenue expenditure. The aim and object of the expenditure would determine the character of the expenditure whether it is a capital expenditure or a revenue expenditure. In the assessee case the following expenditure are Revenue in nature because these expenses are for running the business or working it with a view to produce the profits:

1. Installation of Isolator breakers of improved rating Rs. 4,41,122.75
2. Installation of two lighting transformers Rs. 2,91,522.00

Therefore, we direct the assessing officer to treat the above mentioned expenses as revenue expenditure. Hence, we allow the grounds raised by the assessee and dismiss the grounds of appeals raised by the Revenue.

56. Summarized ground No. 2 raised by the assessee reads as follows:

2.GroundNo.11 Ld. CIT(A) erred in disallowing donation of Rs.1,51,000/- paid to Shri DehatiSthapana Trust. The donation was claimed by assessee u/s 80G(V) of the Act.

57. At the outset, Id. Counsel informs the Bench that the assessee does not want to press ground No. 11 in ITA No. 126/Ran/2015 for A.Y. 2009-10, therefore, we dismiss this ground No. 11 raised by the assessee as not pressed.

58. Before parting, it is noted that the order is being pronounced after 90 days of hearing. However, taking note of the extraordinary situation in the light of the Covid-19 pandemic and lockdown, the period of lockdown days need to be excluded. For coming to such a conclusion, we rely upon the decision of the Co-ordinate Bench of the Mumbai Tribunal in the case of DCIT vs JCB Limited in ITA No 6264/Mum/2018 and ITA No. 6103/Mum/2018 for A.Y. 2013-14 order dated 14.05.2020.

59. In the result, Assessee's appeals are allowed and Revenue's appeals are dismissed and cross objections filed by the assessee are allowed to the extent indicated above.

Order pronounced in the Court on 08.07.2020
