IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A": HYDERABAD
(THROUGH VIRTUAL CONFERENCE)

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA Nos. 164, 165 & 166/H/2020 Assessment Years: 2013-14, 2014-15 & 2016-17		
Dy. Commissioner of Income-tax, Circle – 16(1), Hyderabad.	Vs.	NSL Renewable Power Pvt. Ltd., Hyderabad. PAN – AABCN 6009L
(Appellant)		(Respondent)
Revenue by:	Shri P. Chandra Sekhar	
Assessee by:	Shri Aliasgar Rampurwala	
Date of hearing:	23/06/2021	
Date of pronouncement:	03/09/2021	

O R D E R

PER L.P. SAHU, A.M.:

These three appeals filed by the Revenue are directed against CIT(A) - 4, Hyderabad's separate orders, all dated 25/11/2019 for AYs 2-13-14, 2014-15 and 2015-16 involving proceedings u/s 143(3) of the Income- Tax Act, 1961; in short "the Act". As the facts and grounds are identical in all these appeals, the same were clubbed and heard together and, therefore, a common order is

passed for the sake of convenience. Therefore, the decision taken in AY 2013-14 shall mutatis-mutandis apply to the other appeals as well.

2. The grounds raised by the revenue, which are common in all the appeals, except quantum of additions, are as under:

> "*1. The ld. CIT(A) erred in restricting the disallowance u/s 14A to the dividend income.*
>
> *2. The ld. CIT(A) erred in not considering that section 14A provides for expenditure incurred for earning exempt income.*
>
> *3. The ld. CIT(A) erred in allowing deduction u/s 80IA on Gross total income instead of on business income."*

3. The brief facts as taken from AY 2013-14 are that the assessee company filed its return of income for the AY 2013-14 on 30/11/2013 admitting Nil income after claiming deduction u/s 80IA amounting to Rs. 5,53,81,200/- and book profits u/s 115JB at Rs. 1,31,18,630/-. The case was selected for scrutiny and statutory notices were issued to the assessee.

3.1 During the course of assessment proceedings, the AO noticed from the profit & loss account that the assessee company had debited an amount of Rs. 68,75,000/- towards filing fees for increase of authorized capital. According to AO, this expenditure was towards the increase in share capital which is a balance sheet item and of enduring nature as such is in nature of capital

expenditure and, hence, the said sum of Rs. 68,75,000/- added back to the income of the assessee.

3.2 Further, the AO noted that the Assessee company was in receipt of exempt income (dividend from mutual funds and equities) of Rs. 43,61,557/- and further observed that no expenditure had been claimed/disallowed though such income did not form part of total income. Observing that as per the provisions of section 14A, expenditure incurred in relation to income which does not form part of total income shall be disallowed and also referring to the CBDT Circular No. 5/2014, dated 11/02/2014, the AO computed the disallowance u/s 14A at Rs. 13,51,57,665/- and added to the income returned by the assessee. He, accordingly, assessed the gross total income of the assessee at Rs. 19,74,13,866/- and book profit u/s 115JB at Rs. 1,31,18,630/- as under:

Income from business as shown	(-) 22,70,87,917
Add: Disallowance u/s 14A	13,51,57,665
Disallowance of ROC fees	68,75,000
A. Net Business income	(-)8,50,55,252
Less: Deduction u/s 80IA	Nil
Business income	(-)8,50,55,252
B. Income from house property	15,49,369
C. Income from STCG	10,44,14,475
D. Income from other sources	17,65,05,274
Gross Total income (A+B+C+D)	19,74,13,866

4. Aggrieved by the order of AO, the assessee preferred an appeal before the CIT(A) and the CIT(A) restricted the disallowance u/s 14A to Rs. 43,61,557/- on the ground that the assessee had earned dividend income of Rs. 43,61,557/- from its subsidiary companies during the year under appeal, hence, restricted to that extent.

4.1 As regards addition of Rs. 68,75,000/- towards ROC fee, the CIT(A) confirmed the same.

4.2 As regards deduction u/s 80IA of the Act, the AO denied the deduction u/s 80IA from the gross total income, while the CIT(A) allowed the same following the decision of the coordinate bench of this Tribunal in assessee's own case in ITA No. 2146/Hyd/2017 for AY 2010-11, dated 14/08/2019, on which reliance placed by the ld. AR of the assessee.

5. Aggrieved by the order of the CIT(A), the revenue is in appeal before us against the action of the CIT(A) in restricting the disallowance u/s 14A and allowing deduction u/s 80IA of the Act.

6. Before us, the ld. DR filed written synopsis, which is as under:

ISSUE UNDER DISPUTE*:*

The main issue involved in this case is, in respect of income derived from eligible business, whether the assessee is eligible to claim deduction u/s. 80IA of the Act, from income computed under the heads "Income from house property", "Capital gains", and "Income from other sources", which are

forming part of the gross total income of the assessee or to be restricted to income under the head "Profits and gains of business or profession".

2. In this regard, it is humbly submitted that the Hon'ble ITAT, B-bench, Hyderabad, with the same combination of Hon'ble Accountant Member and Judicial Member, in the assessee's/ respondent's own case for the AY 2011-12, vide order in ITA No. 1024/H/2017, dated 17-06-2021, has held that ***the assessee is not eligible to claim deduction u/s.80IA of the Act, from the income from house property****. The relevant portion of the decision is reproduced below, for your kind reference:*

> *"2.1 In view of the above of our discussion, the assessee is not eligible to claim the deduction u/s 80IA of the Act. The legislature has clearly spelt out in the deduction provisions that which incomes are eligible to claim deduction u/s 80IA, and therefore, the assessee cannot go beyond the provisions and claim deduction u/s 80IA. The deduction provisions should be interpreted strictly and if there is any ambiguity, it goes to in favour of revenue. this proposition we rely on the judgment of Hon'ble Supreme Court in the case of Ramnath & Co. Vs. CIT in CIVIL APPEAL Nos. 2506-2509 OF 2020 (Arising out of SLP (Civil) Nos. 23535 – 23538 of 2016), vide judgment dated 5th June, 2020, wherein it is held as under:*
>
> *"10.2. As regards the principles of interpretation, the learned senior counsel for revenue has strongly relied upon the Constitution Bench decision in Commissioner of Customs (Import), Mumbai v. Dilip Kumar & Co. and Ors: (2018) 9 SCC 1 to submit that it is now settled beyond doubt that taxing statutes are subject to the rule of strict interpretation, leaving no room for any intendment; and the benefit of ambiguity in case of an exemption notification or an exemption clause must go in favour of the revenue, as exemptions from taxation have a tendency to increase the burden on the unexempted class of tax payers. The same principles, according to the*

learned counsel, shall apply to Section 80-O of the Act and, for the law declared by the Constitution Bench, the decision relied upon by the learned counsel for the appellant in Baby Marine Exports (supra), which even otherwise dealt with Section 80HHC of the Act and not Section 80-O, is of no help to the appellant."

2.2 Accordingly, the assessee is not eligible to claim deduction u/s 80IA from the income from house property as claimed. Thus, we dismiss the ground no. 1 raised by the assessee on this issue."

3. Accordingly, by placing reliance on the above-mentioned decision and in accordance with ***"The Rule of Consistency"*** *and* ***"The Doctrine of Judicial Discipline"****, it is humbly requested to set-aside the order of the Ld. CIT (A) and restore the addition made by the AO.*

4. Without prejudice to the above, in the light of the arguments made by the

counsel for the respondent, I would like to submit as under:

BRIEF FACTS OF THE CASE/AY 2013-14, ITA No.164/H/2020:

5. As seen from the facts of the case, during the year under reference, the assessee was operating 9 power generating units, eligible for deduction u/s. 80IA of the Act. The assessee filed the Return of Income for the impugned AY 2013-14, disclosing loss under the head "Profits and gains of business or profession", to the extent of (-) Rs.22,70,87,917/-, apart from income from other heads as tabulated below:

S.No	*Head of income*	*Amount in Rs.*	
1	*Profits and gains of business or profession*		*(-) 22,70,87,917*
2	*Income from house property*	*15,49,369*	
3	*Short Term Capital Gains*	*10,44,14,475*	
4	*Income from other*	*17,65,05,274*	

	sources		
5	*Total income from various heads other than "Profits and gains of business or profession"*	*(+) 28,24,69,118*	

6. However, while computing the total income, the assessee claimed set off of the loss under the head business of (-) Rs.22,70,87,917/- against the income from other heads of (+) Rs.28,24,69,118, and arrived at the gross total income of Rs.5,53,81,200/- (28,24,69,118 - 22,70,87,917) before applying provisions of Chapter VIA of the Act. Further, the assessee has claimed deduction under Chapter VIA of the Act i.e., under section 80IA of the Act, towards profits from 4 power generating units, to the extent of Rs.17,26,49,292/- and restricted the same to the extent of gross total income of Rs.5,53,81,200/-. As such, the assessee has computed income from eligible business in respect of 4 power generating units by applying the provisions of section 80IA(5) of the Act to the extent of Rs.17,26,49,292/- without adjusting loss from other 3 power generating units aggregating to (-) Rs.38,31,92,221/-. The details of income and loss in respect of 4 power generating units and 3 power generating units, respectively, are tabulated below for the sake of ready reference.

ELIIBLE POWER GENERATING UNITS WHICH DISCLOSED PROFIT/INCOME:

S.No	*Name of the unit*	*Amount of Profit/Income in Rs.*
1	*Unit-I, Jaglur*	*2,57,70,702/-*
2	*Unit-II, Jaglur*	*3,43,74,695/-*
3	*Unit-III, Jaglur*	*5,43,90,705/-*
4	*Unit-IV, Jaglur*	*5,81,13,190/-*
	TOTAL PROFIT/INCOME	*17,26,49,292*

ELIIBLE POWER GENERATING UNITS WHICH DISCLOSED LOSS:

S.No	*Name of the unit*	*Amount of Loss in Rs. (-)*
1	*Bheemsamudra, Unit-I*	*7,29,96,413*
2	*Bheemsamudra, Unit-II*	*12,37,65,522*
3	*Bheemsamudra, Unit-III*	*18,64,30,286*
4	*TOTAL LOSS*	*38,31,92,221*

7. On the other hand, before computing the gross total income, the assessee applied the provisions of Chapter VI of the Act and arrived at the income/loss under the head "Profits and gains of business or profession". To be precise, by following the provisions of section 70(1) of the Act, i.e., ***set-off of loss from one source against income from another source under the same head of income****, the assessee has rightly set off the current year losses from 3 eligible power generating units against the income from 4 eligible power generating units. Thereafter, the assessee applied the provisions of section 71(1) of the Act, i.e.,* ***set-off of loss from one head against income from another/inter-head set off****, and accordingly, after set off of the net loss under the head "Profits and gains of business or profession" against income from other heads of income, ultimately arrived at the taxable gross total income of Rs.5,53,81,200/-, which is nothing but income from one of the other heads, other than from Business.*

8. Thus, in the instant case, ***it is an admitted fact that, before applying the deduction provisions under Chapter VA/80IA of the Act, the taxable gross total income of Rs.5,53,81,200/- does not include any income from 4 eligible power generating units since the same was set off against losses from 3 other eligible power generating units. As such, there is no income relatable to any of the eligible power generating units subjected to tax in the form of gross total income of Rs.5,53,81,200/-. To put it other way, no part of the income derived from eligible power generating units is included in the gross total income of Rs.5,53,81,200/-***

9. Similarly, in terms of section 80IA(5) of the Act, the assessee is having taxable income derived from 4

power generating units aggregating to Rs.17,26,49,292/- and the same is not subjected to tax implying that the income from eligible business is totally exempt from tax. Thus, the assessee need not to pay any taxes on Rs.17,26,49,292/-, but at the same time the assessee cannot claim set off of such exempted income/profits against the gross total income. By doing so, what the assessee is actually claiming is deduction towards income admitted under other heads of income i.e., "Income from house property", "Capital gains", and "Income from other sources", in the guise of claiming deduction towards profits/income derived from eligible business, leading to double deduction, i.e., firstly, by way of total exemption from tax and secondly, by claiming deduction of the same amount against income from other heads of income.

10. On the other hand, as seen from the language of provisions of section 80IA of the Act, the intention of the legislature is totally different i.e., to provide tax- holiday period of 10 AYs directly linked to profit/income derived from the eligible business, implying that the assessee is exempt from payment of tax in respect of profits/income derived from eligible business, if any, rather than set-off of such profits/income against income from other heads. **However, if such income/profit derived from eligible business is included in the gross total income, then, the assessee can claim exemption from tax by way of claiming deduction from gross total income.**

11. In this regard, reliance is placed on the Landmark judgment of Hon'ble Supreme Court in ***ESCORTS LTD. AND ANOTHER vs UNION OF INDIA AND OTHER [1993] 199 ITR 43 (SC),*** *wherein it has been held that double deduction in regard to same business outgoing is not intended unless clearly expressed in the provisions of the Act. The relevant portion of the judgment is extracted below, for kind reference of the Hon'ble Bench:*

> ***"there is a fundamental, though unwritten, axiom that no Legislature could have at all intended a double deduction in regard to the same business***

outgoing; and, if it is intended, it will be clearly expressed. In other words, in the absence of clear statutory indication to the contrary, the statute should not be read so as to permit an assessee two deductions-"

12. Also, a copy of the decision is annexed to the submissions. By following the ratio laid down by the Hon'ble Supreme Court in Escorts Ltd. (supra), it is humbly submitted that the assessee cannot claim double deduction of same income once by not paying tax on the income derived from 4 eligible units of Rs. 17,26,49,292/- and, secondly, by claiming set-off of the same against income from other heads of income to the extent of Rs.5,53,81,200/-.

DECISION OF HON'BLE SUPREME COURT IN CIT VS M/S. RELIANCE ENERGY LIMITED:

13. Coming to the reliance placed by the Ld. Counsel on the recent judgment of Hon'ble Supreme Court in the case of ***CIT vs M/s. Reliance Energy Limited****.,* ***(2021) 127 taxmann.com 69****, a careful reading of the same would reveal the fact that the ratio-decidendi is not applicable to the case on hand, in view of the following reasons:*

14. As seen from the decision of Hon'ble Supreme Court, it is clearly evident that the issue was held in favour of the assessee on the basis of fulfilling certain conditions, which are extracted below;

1. *In respect of profits derived from eligible business, the 1st condition to be fulfilled for claiming deduction u/s.80IA of the Act, is-****there should be positive income under the head "Profit and gains of business or profession"****. (****Please refer para no.2 at page no.3 and para no.12 at page no.13 & 14 of the Supreme Court Order****).*

2. *Secondly, the quantum of income derived from eligible business and allowable deduction*

*u/s.80IA(1) of the Act, as the case may be, shall be computed by applying the provisions of sub-section (5) of section 80IA of the Act, wherein such amount of deduction shall be computed treating the eligible business as the only source of income. However, the Hon'ble Supreme Court held that sub-section (5) cannot be pressed into service for reading a limitation of the deduction under sub-section (1) only to business income. (**Please refer para no.15 at page no.17 & 18**).*

3. *Thirdly, after computing the income derived from the eligible business and quantum of deduction u/s.80IA(5) of the Act, the assessee is eligible to claim such amount as deduction against the gross total income of the assessee.*

*15. On the other hand, in the instant case, as explained earlier, it is an admitted fact that, as per the profit and loss account as well as statement of computation of total income, the assessee has disclosed loss from business to the extent of (-) Rs.22,70,87,917/-. Whereas, in the case of **Reliance Energy Ltd** (supra), on the basis of which the assessee claimed deduction u/s.80IA of the Act, before the Hon'ble Bench, **it is clearly stated by the Hon'ble Supreme Court that the business income of the assessee was computed at Rs.355,74,73,451/- and the gross total income at Rs.397,37,70,178/-, inclusive of income from other sources of Rs.41,62,96,727/-. As such, in the case-law, the assessee did not claim any loss under the head "Profits and gains from business or profession". It is humbly submitted that this particular difference in factual-matrix of the cases may be taken into cognizance.***

16. Under the circumstances, there is a clear-cut distinction between the facts involved in the case decided by the Hon'ble Supreme Court (supra) and the instant case. As such, the proposition of law laid down by the Hon'ble Supreme Court can be pressed into action only in case of

disclosure of positive income under the head "Profits and gains of business or profession". Accordingly, without there being any positive income under the head "Profits and gains of business or profession", the assessee cannot claim deduction of income derived from eligible business, from the gross total income consisting of income from other heads such as "Income from house property", "Capital gains", "Income from other sources", etc.

17. Thus, in order to avail the benefit of the decision, the assessee is required to fulfil the primary condition that there is otherwise taxable income under the head "Profits and gains of business or profession". Once such condition is fulfilled, then the assessee can claim the entire amount of income derived from eligible business by applying the provisions of section 80IA(5) of the Act, as deduction, not only from such taxable income under the head "Profits and gains of business or profession", but also to the extent of gross total income.

18. ***In view of the above, in spite of the fact that the assessee has computed quantum of deduction under eligible business i.e., from 4 different power generating units aggregating to Rs.17,26,49,292/-, but the income under the head "Profits and gains of business or profession" consisting of profit/loss from all the eligible units of the assessee-company is worked out to be loss of (-) Rs.22,70,87,917/-, the assessee cannot claim set off of profit/income from eligible units against the gross total income consisting of income disclosed under other heads.***

19. In view of this, as per the law laid down by the Hon'ble Supreme Court in the case of ***Reliance Energy Ltd*** *(supra), without there being any positive income under the head "Profits and gains of business or profession", before allowing deduction under Chapter VIA of the Act, the assessee is not eligible to claim deduction of income separately computed in respect of eligible units. This*

particular proposition of law was already laid down by the Hon'ble Supreme Court in ***IPCA Laboratory Ltd. vs Deputy Commissioner of Income-tax [2004] 135 Taxman 594 (SC)****. The Head Note of the judgment as extracted from ITR is given below, for kind reference of the Hon'ble Bench*

> *"WORDS AND PHRASES — "PROFIT", MEANING OF.*
> *Undoubtedly section 80HHC has been incorporated in the Income-tax Act, 1961, with a view to providing incentive for earning foreign exchange. Even though a liberal interpretation has to be given to such a provision the interpretation has to be as per the wording of the section. If the wording of the section is clear, then benefits which are not available cannot be conferred by ignoring or misinterpreting words in the section.*
> *A plain reading of section 80HHC makes it clear that in arriving at profits earned from export of both self-manufactured goods and trading goods, the profits and losses in both trades have to be taken into consideration. If after such adjustments there is a positive profit the assessee would be entitled to deduction under section 80HHC(1) . If there is a loss the assessee would not be entitled to deduction.*
> *The word "profit" in sub-sections (1) and (3)(a) and (b) of section 80HHC means a positive profit. In other words, if there is a loss then no deduction would be available under sub-section (1) or sub-section (3)(a) or sub-section (3)(b).* ***In arriving at the figure of positive profit, both the profits and the losses will have to be considered. If the net figure is a positive profit then the assessee will be entitled to deduction; if the net figure is a loss then the assessee will not be entitled to deduction****.*
>
> *(Emphasis supplied)*

Further, the relevant portion of the decision is extracted below, for ready reference:

*"**11.** Under section 80HHC(1) the deduction is to be given in computing the total income of the assessee. In computing the total income of the assessee both profits as well as losses will have to be taken into consideration. Section 80AB is relevant. It reads as follows :*

> *"80AB. Deductions to be made with reference to the income included in the gross total income.—Where any deduction is required to be made or allowed under any section included in this Chapter under the heading 'C-Deductions in respect of certain incomes' in respect of any income of the nature specified in that section which is included in the gross total income of the assessee, then, notwithstanding anything contained in that section, for the purpose of computing the deduction under that section, the amount of income of that nature as computed in accordance with the provisions of this Act (before making any deduction under this Chapter) shall alone be deemed to be the amount of income of that nature which is derived or received by the assessee and which is included in his gross total income."*

Section 80B(5) is also relevant. Section 80B(5) provides that "gross total income" means total income computed in accordance with the provisions of the Income-tax Act.

***12.** Section 80AB is also in Chapter VI-A. It starts with the words "where any deduction is required to be made or allowed under any section of this Chapter". This would include section 80HHC. Section 80AB further provides that "notwithstanding anything contained in that section". Thus section 80AB has been given an overriding effect over all other sections in Chapter VIA. Section 80HHC does not provide that its provisions are to prevail over section 80AB or over any other provision of the Act.*

Section 80HHC would thus be governed by section 80AB. Decisions of the Bombay High Court and the Kerala High Court to the contrary cannot be said to be the correct law. Section 80AB makes it clear that the computation of income has to be in accordance with the provisions of the Act. If the income has to be computed in accordance with the provisions of the Act, then not only profits but also losses have to be taken into consideration."

20. Also, reliance is placed on the following judicial precedents wherein similar proposition of law was re-iterated by the Hon'ble SC (case-laws annexed):

1) Liberty India Ltd. vs CIT (2009) 317 ITR 218 (SC)
2) Synco Industries Ltd. vs AO (2008) 299 ITR 444 (SC)
3) A.M. Moosa vs CIT (2007) 163 Taxman 741 (SC)
4) CIT vs Shirke Construction Equipments Ltd. (2007) 161 Taxman 212

21. It is trite law that until unless there are similarities in the facts of the case, it is not permissible to get the benefit of the proposition of law laid down by Hon'ble Supreme Court. Accordingly, the assessee cannot claim the benefit of the decision of Hon'ble Supreme Court in bits and pieces.

22. Further, as held by the Hon'ble Supreme Court, it is mandatory to compute income from eligible business by applying the provisions of sub-section 80IA (5) of the Act. While doing so, any loss computed under the eligible units in the earlier AYs falling under the window period of 10 years shall be reduced from the current profits of the eligible business, and balance amount, if any, only to be considered for tax exemption or deduction, as the case may be.

23. At this juncture, it is also important to note that the provisions of section 80IA of the Act, have been inserted by

the legislature in the statue book to provide profit-linked incentives to certain industries or industries located in certain backward areas with an intention to exempt certain percentage of profits derived from such eligible units from taxation, which are otherwise taxable as per the regular provisions of the Act. Further, the exact amount of deduction or income which is otherwise taxable has to be computed by applying the provisions of section 80IA(5) of the Act. In this regard, the intention of legislature is clearly embedded in sub-section (1) of section 80IAof, the Act which reads as under":

> *"Where the gross total income of an assessee includes any profits and gains derived by an under taking or an enterprise from any business referred to in sub-section ----------, a deduction of an amount equal to 100% of the profits and gains derived from such business for 10 consecutive assessment years be allowed in computing the total income of the assessee".*

24. In normal course, if the gross total income of an assessee does not include any income derived from the eligible business, then the assessee need not be subjected to tax at all. On the other hand, by virtue of section 80IA of the Act, even if the gross total income includes any income derived from the eligible business, the assessee need not pay taxes on the same and for that purpose it is contemplated in the Act that, if such income is included in the gross total income, then the same shall be excluded or deducted from the gross total income.

25. Thus, it is clearly implied that the intention of legislature is not to tax income derived from eligible business in a particular F.Y./A.Y., and such incentive is extended for a period of 10 Assessment Years. Further, the procedure as to how to allow such incentive/deduction towards the income derived from the eligible business is embedded in the machinery provisions of section 80IA of the Act.

26. This tax incentive/ tax-holiday was initially allowed on certain percentage of profits/income derived from eligible business, i.e., for example 20% of the profits/income. In view of this, in stead of drafting the provision as exemption from tax i.e., under Chapter III of the Act, included under deduction provisions i.e., under Chapter VIA of the Act., so that out of 100% of such income/profits included in the "Profits and gains of business and profession" which in-turn is included in the gross total income, only 20% or so will be exempted from tax by way of deduction of such 20% of income/profit from the gross total income. However, latter, it was made 100% exemption from tax.

27. In a case, where there is no income derived from the eligible business which is otherwise subjected to tax by way of including in the gross total income, it is quite obvious that the assessee need not to pay tax. Similarly, though there is income from eligible business, but due to set-off of the same against other business income, the assessee need not to pay tax on the income derived from eligible business. Thus, as a natural corollary, when there is no income derived from eligible business which is subjected to tax, the question of allowing deduction in respect of such non-taxable income out of gross total income does not arise at all.

28. To put it in a nut shell, for instance, if an assessee is having income derived from eligible business to the extent of Rs.1 crore but the same is not subjected to tax since while arriving at the gross total income, the said income is set off against loss from other business units of the assessee or on account of loss from other heads of income, then there would not be any income from such eligible business which is subjected to tax at all. Under the circumstances, if the assessee is also having income from house property of Rs.1 crore which is otherwise taxable and, therefore, included in the gross total income, the assessee cannot claim set-off of the exempted income from eligible business of Rs. 1 crore against income from house property of Rs.1 crore inasmuch as in terms of the provisions of section 80IA(1) of the Act, the

assessee need not to pay any tax on such income derived from eligible business but he is supposed to pay tax on the house property income of Rs.1 crore. On the other hand, if the argument of the assessee that income from eligible business of 1 crore should be set off against income from house property of Rs.1 crore and thereby making the taxable income nil, it would lead to an absurd situation wherein the assessee would avail double deduction in respect of same income or weighted deduction at the rate of 200% of the eligible income, i.e. firstly, without paying any tax on the business income of Rs.1 crore and, secondly, by claiming deduction of the same from house property income, which is not at all the intention of legislature.

29. However, in case of investment linked incentives/tax-holiday provisions such as 35 AC of the Act, the assessee can claim the entire amount of capital expenditure against the gross total income of the assessee, and in case of insufficient gross total income, the same can be carried-forward to subsequent AYs and claimed as deduction. As such, there is a stark difference between profit linked incentives as contained in Chapter VIA of the Act and investment linked one as contained under Chapter IV of the Act. It is humbly requested that the same may considered while deciding the issue, keeping in view the decision of the Hon'ble SC in host of decisions (supra)*.*

AY 2014-15 / ITA No. 165/H/2020:

30. The facts and circumstances involved in the case of respondent for the AY 2014-15 are identical. To be precise, for the AY 2014-15, the assessee claimed loss under the head "Profits and gains of business or profession" of (-) Rs.1,10,08,215/-. However, while computing the total income, the assessee claimed set off of the loss under the head business of (-) Rs.1,10,08,215/- against the income from other heads of (+) Rs. 18,66,98,748/-, consisting of ***"Income from house property" of Rs.13,63,103/- and "Income from***

other sources" of Rs.18,53,35,645/-, *and arrived at the gross total income of Rs.17,56,90,533 /- before applying provisions of Chapter VIA of the Act.*

31. Further, the assessee has claimed deduction under Chapter VIA of the Act i.e., under section 80IA of the Act, towards profits from 4 power generating units, to the extent of Rs.16,29,42,462 /- and arrived at the taxable income of Rs.1,27,48,0715/-. As such, the assessee has computed income from eligible business in respect of 4 power generating units by applying the provisions of section 80IA(5) of the Act to the extent of Rs. Rs.16,29,42,462 /- without adjusting loss from other 4 power generating units aggregating to (-) Rs.32,93,75,473 /-.

32. Accordingly, the assessee claimed double deduction of the same income derived from eligible business firstly, by claiming entire amount as exempt from tax since no tax has been paid on Rs.16,29,42,462 /-, and secondly, claimed the said amount as deduction against the income from other heads of income included in the gross total income.

AY 2016-17, ITA No.166/H/2020:

33. Insofar as the AY 2016-17, the assessee claimed the entire amount of income/profit from 3 eligible units of Rs.5,89,90,485/-, being the amount quantified under section 80IA(5) of the Act, as exempt from tax, but no deduction claimed from income from other heads since there is no positive gross total income in view of loss from Business disclosed of (-) Rs. 37,57,11,970/- is more than the income from other heads of Rs.18,53,19,771/-, which resulted in net loss from Business of (-) Rs.19,03,92,199/-. Accordingly, there is no dispute in this AY.

6.1 In addition to the above, he submitted that the AO has rightly disallowed the claim of the assessee u/s 80IA from the gross total

income because there was no profit element from the eligible units to include the gross total income, as the assessee had itself declared loss from the business or profession.

7. The ld. AR of the assessee also filed written synopsis, which is as under:

> ***<u>In this regard the Assessee submits as under:</u>***
>
> *The Assessee is engaged in the business of generation & sale of power and is eligible to claim deduction u/s. 80-IA of the Income-tax Act, 1961 ('Act'). For all the captioned years, the Ld. AO made disallowance of expenses u/s. 14A of the Act and also restricted the claim of deduction u/s 80-IA ONLY to the extent of Income under the head "Profits and gains of business or profession" ('PGBP'), instead of restricting the same against Gross Total Income ('GTI') of the Assessee. On appeal, Ld. CIT(A) gave relief on addition made u/s. 14A by restricting the disallowance to the extent of exempt income by relying on the Hon'ble ITAT order in Assessee's own case for the earlier year. Further, Ld. CIT(A) provided relief on section 80-IA by allowing the deduction to the extent of GTI and not restricting it ONLY against Income from Business or Profession. Aggrieved by the order of Ld. CIT(A), Department is into appeal before Hon'ble ITAT.*
>
> *During the course of hearing on 23 June 2021 our authorized representative (AR) argued that:*
>
> a) ***14A issue**: The issue is covered in favour of the assessee vide Hon'ble ITAT order in Assessee's own case bearing **ITA No. 1024/Hyd/2017 dated 17.06.2021;***
>
> b) ***80-IA issue**: The AR submitted that even though there is an against order in assessee's own case for the earlier year, now the issue is covered in favour of assessee by recent Hon'ble SC decision in the case of **CIT vs. Reliance Energy Ltd. [Civil Appeal No. 1327 of 2021 (SC)]***

Post the arguments, Your Honours requested the AR to file a detailed working of computation of deduction u/s 80IA of the Act. In compliance thereof, on 23 June, 2021, a short summary sheet was filed vide email dated 23 June, 2021 providing year-wise detail of GTI and deduction u/s. 80-IA of the Act along with referencing to relevant pages of the Paperbook ('PB'). The copy of the email and summary sheet is attached herewith again for Your Honours ease of reference at ***Page 1 to 2*** *(filed along with captioned written submissions).*

Further, Your Honours on 29 June, 2021 asked Learned AR to file a detailed working for each of the captioned year demonstrating unit-wise working of Profit before tax (as per Profit and Loss Account), Income from Business or Profession and deduction u/s. 80-IA (eligible units) of the Act after all the relevant allowances and disallowances under the Act.

Your Honours also asked Learned Department Representative ('Ld. DR') to file written submissions in support of his arguments. Ld. DR vide email dated 09 July 2021, shared written submissions with the Hon'ble Bench as well as to the Respondent Assessee

In compliance to the request made by the Hon'ble Members we are submitting the additional documents and also our rebuttals to the submission made by the Ld. DR. The same is produced hereunder:

A. <u>Additional Documents as required by the Hon'ble Members:</u>

Refer to following table:

Asst. Year	***Particulars***	***Page No.***
2013-14	*Unit/Segment wise computation of income*	***3***
	Profit and Loss Account ***(refer Page 3 of PB)***	***4***

	Computation of Income ***(refer Page 32 to 34 of PB)***	***5 to 7***
	Form 10CCB for eligible units claiming 80-IA deduction ***(refer Page 36 to 67 of PB)***	***8 to 39***
2014-15	*Unit/Segment wise computation of income*	***40***
	Profit and Loss Account ***(refer Page 9 of PB)***	***41***
	Computation of Income ***(refer Page 36 to 38 of PB)***	***42 to 44***
	Form 10CCB for eligible units claiming 80-IA deduction ***(refer Page 40 to 55 of PB)***	***45 to 60***
2016-17	*Unit/Segment wise computation of income*	***61***
	Profit and Loss Account ***(refer Page 3 of PB)***	***62***
	Computation of Income ***(refer Page 31-32 of PB)***	***63 to 64***
	Form 10CCB for eligible units claiming 80-IA deduction ***(refer Page 35 to 46 of PB)***	***65 to 76***

The Assessee submits that the deduction computed u/s. 80-IA of the Act should be allowed in totality from the GTI and should not to be restricted ***ONLY*** *to Income from Business or Profession. In support of the said contention, reliance was placed on the following decisions at the time of hearing:*

a. ***CIT vs. Reliance Energy Ltd. [Civil Appeal No. 1327 of***

2021 (SC)] *[Page 1 to 18 of compilation of judgements ('COJ')]*

b. ***NSL Renewable Power Private Limited vs. DCIT (AY 2010-11) (ITA No. 2146/Hyd/2017)*** *(Page 19 to 32 of COJ) (Assessee's own case)*

c. ***NSL Renewable Power Private Limited vs. DCIT (AY 2012-13) (ITA No. 988/Hyd/2017)*** *(Page 33 to 42 of COJ) (Assessee's own case)*

d. Meera Cotton & Synthetic Mills (P) Ltd vs. ACIT (2009) 29 SOT 177 (Mum.Trib.)

B. <u>Rebuttal to Department's submissions:</u>

As regard the Ld. DR's submission, we would like to place on record our rebuttals.

1. *At the outset, Ld. DR relied on Assessee's own case for AY 2011-12 (ITA No. 1024/Hyd/2017) wherein Your Honours have held that the assessee is not eligible to claim deduction u/s. 80-IA of the Act, from the income from house property and submitted that in accordance with 'The Rule of Consistency' and 'The Doctrine of Judicial Discipline', the order of Learned Commissioner of Income Tax (Appeals) be set-aside and the action of Learned Assessing Officer be restored.*

<u>Our submission:</u>

a. *Post the ITAT Order for AY 2011-12 the Hon'ble Supreme Court in the case of* ***CIT vs. Reliance Energy Ltd. [Civil Appeal No. 1327 of 2021 (SC)]*** *[Page 1 to 18 of COJ] have decided the issue in favour of the Assessee. As a consequence, we are in the process of filing Miscellaneous Application against the said order of AY 2011-12, to reconsider the judgment based on the Hon'ble Supreme Court decision in the case of* ***Reliance Energy Ltd. (supra).*** *Hence, the reliance of the Ld. DR on the said judgment to drive home the*

proposition that the deduction of u/s. 80-IA of the Act is to be restricted to Business Income is incorrect in law.

b. *Further, Ld. DR relied on the Assessee's own case for AY 2011-12 and resorted to 'The Principle of Consistency' and 'The Doctrine of Judicial Discipline' without appreciating the fact that the Hon'ble ITAT in Assessee's own case for AY 2010-11 (supra) and AY 2012-13 (supra) has passed the order in favour of the Respondent Assessee by observing that deduction u/s. 80-IA of the Act should be allowed against the GTI and should not be restricted to Income from Business or Profession. Thus, at present there are decisions of Hon'ble Hyderabad Tribunal both in favour as well as against the Respondent Assessee. In this regard, reliance is placed on the Hon'ble SC decision in the case of* ***CIT vs. Vegetable Products Ltd. [(1973) 88 ITR 192 (SC)]*** *which observed that when there are two views on same issue, the issue favourable to the assessee should be considered.*

c. *In this regard, it is further submitted that the Assessee's case is now fully covered by Hon'ble SC decision in the case of Reliance Energy (supra) and therefore there is no scope of two views and therefore no dispute arises and that the Ld. DR's reliance on AY 2011-12 order in Assessee's own case is completely misplaced and should be rejected in limine.*

2. *The Ld. DR brought out the facts of AY 2013-14 for the sake of reference and stated that the Assessee operates in 9 power generating units out of which 3 power generating units are declaring loss and 4 power generating units are declaring profits (refer to Page 4 of Ld. DR submissions). Ld. DR submitted that before applying the provisions of Chapter VIA and deduction u/s. 80-IA of the Act, the Appellant ought to set-off the losses of 3 power generating units against the profit of 4 units and that after such set-off of inter-unit losses, no income relatable to any of the eligible units forms part of gross total income and therefore no deduction u/s. 80-IA is eligible.*

Our submission:

a. *In this regard, it is humbly submitted that the issue raised by Ld. DR before Your Honours with respect to set-off the losses of 3 power generating units against the profit of 4 units and that after such set-off of inter-unit losses, no income relatable to any of the eligible units forms part of gross total income and therefore no deduction u/s. 80-IA is eligible,* ***is not in dispute*** *and that no such observations are made by the Ld. AO in the assessment order. Reliance is placed on the* ***Hon'ble Special Bench decision of Mumbai ITAT in the case of Mahindra & Mahindra Ltd. vs. DCIT [(2009) 122 TTJ 577 (Mum) (SB)] (A copy of the Order is attached at Page 77 to 139)*** *wherein it has been held that the Departmental Representative has no jurisdiction to go beyond the order passed by the AO. It has further been observed in the said case that the scope of argument of the Departmental Representative should be confined to supporting or defending the impugned order and he cannot be permitted to set up an altogether different case. Therefore, the Ld. DR should not be permitted to go beyond the issue disputed by the Ld. AO in his order.*

b. ***Without prejudice to above contention,*** *it is respectfully submitted that the issue of set-off of losses within 80-IA units have been decided by* ***Hon'ble Hyderabad ITAT in the Assessee's own case [ITA No. 2146/Hyd/2017 dt. 14.08.2019 for AY 2010-11] (already filed at Page 19 to 32 of COJ) (Copy of the Order is attached again to this submission at Page 140 to 153). It has been held that the loss of the eligible units cannot be set-off against the profits of other eligible units.*** *The relevant para of the decision is re-produced herein below for ready reference:*

> *"11…. Even otherwise, on merits of the issue which is raised in Ground No.2, we find that the issue is covered in favour of the assessee by various decisions which are relied upon by the ld Counsel for the assessee. Sub-section 5 of Section 80IA provides that the deduction should be calculated in respect of an eligible unit on a standalone basis i.e. as if it is the only source of income to the assessee. This is for the reason that an assessee is eligible*

for deduction u/s 80IA for a period of 10 years and the first of these ten years can be selected by the assessee.

12. ***In the case of CIT vs. Dewan Kraft Systems () Ltd (2008) 297 ITR 305, the hon'ble Delhi High Court has clearly brought out that loss of eligible unit cannot be set off against the profits of another eligible unit.*** *Relevant paragraphs of the Hon'ble Delhi High Court decision are as under:*

> *"13. Perusal of the above provision shows that it is a distinct and separate deeming provision which lays down the special method of computing the profits and gains entitled to deduction under section 80-IA of the Act. Moreover, this provision is of overriding nature providing specifically that during each of the assessment years in the tax holiday, period in which the assessee is entitled to deduction under section 80-IA of the Act, this provision will be applied as if the industrial unit is an independent unit and is the one and only source of income possessed by the assessee.*
>
> *14. It is clear that while computing deduction under section 80-IA of the Income-tax Act, 1961, the profits and gains of Kalamb unit for the purpose of determining the quantum of deduction under section 80-IA(5) of the Act is to be computed if such eligible business of the said unit is the only source of income of the assessee. The Assessing Officer mixed the profits of the Kalamb unit with the profits of units at Delhi and NOIDA and, thus, he erroneously restricted the deduction to the extent of business income and this was done by him in total disregard of the previsions of sub-section (7) of section 80-IA of the Act as mentioned above.*
>
> *15. Thus, the Kalamb unit being the only unit of the assessee eligible for deduction under section 80-IA of the Act is to be treated as an independent unit and the same is to be treated as the only source of income for*

assessee for the purpose of computing deduction under section 80-IA of the Act. The deduction claimed by the assessee under section 80-IA of the Act, thus, is in accordance with the said provisions and as such we find that there is no infirmity in the impugned order passed by the Income-tax Appellate Tribunal".

13. In the case of Punit Construction Co (Supra), the Coordinate Bench of the Tribunal at Mumbai has considered various judicial precedents including the decision of the hon Apex Court in the case of Plastiblends India Ltd vs. Add. CIT which was relied upon by the learned DR, and has held as under:

"13. In this case, the assessee is into two segment of business i.e. construction business which is non eligible and power generation business which is eligible business u/s 80IA of the Act. Admittedly, the assessee has set up 5 wind mills out of which two wind mills are set up in the financial year relevant A.Ys. 2005-06 and 2006-07 and remaining 3 wind mills have been set up during the financial year relevant to A.Y. 2011-12. All 5 wind mills are situated at different locations and commenced production at different point of time. All 5 wind mills are eligible units for deduction u/s 80IA of the Act. The assessee has derived profit from 2 wind mills and incurred losses from 3 wind mills. ***The assessee has claimed deduction u/s 80IA in respect of profit of 2 wind mills without set off of losses of 3 wind mills, considering each wind mill as a separate unit eligible for deduction u/s 80IA of the Act. Considering the facts and circumstances of this case, we are of the considered view that the assessee's claim of deduction u/s 80IA is in accordance with the provisions of section 80IA(5) of the Act and also in consonance with the decisions of ITAT, Ahmedabad special Bench and ITAT, Bangalore decision. Hence, we direct the AO to allow deduction claimed u/s 80IA of the Income Tax Act, 1961.***

14. In the case of Jindal Aluminium Ltd (Supra), in similar circumstances it was held as under:

> *"13. Coming back to the facts of our case we observe that the gross total income of the assessee is at Rs. 8,03,26,598 lakhs after adjusting the losses suffered by it in the eligible as well as profits of the non-eligible units. There are no brought forward losses or unabsorbed depreciation. The claim of deduction under section 80-IA was in respect of eligible unit 4.14 MW wind energy division at Rs. 4,72,28,143 and the deduction u/s.80HHC of the Act was claimed in respect of other units at Rs.15,51,440. Even if both the deductions are added the sum total is obviously less than the gross total income.* ***In our considered opinion the learned Commissioner of Income-tax (Appeals) has erred in interpreting the relevant provision when he held that the losses suffered by the assessee in two eligible units be reduced from the income of the other eligible unit before granting the deduction under section 80-IA. Since the facts of the case in the case of Synco Industries Ltd. (supra) lie in an altogether different compartment, we hold that the ratio of that case cannot be considered for application to the assessee' s case. Accordingly, the impugned order is overturned and the assessee is allowed deduction under section 80-IA on the profit derived by it from eligible unit 4.14 MW wind energy unit at Rs.4,72,28,143.***
>
> *14. We find that the CIT(A) in the present case has disregarded the binding decision of the ITAT. The basis on which the CIT(A) refused to follow the order of the ITAT in assessee's own case for the assessment year 2006-07 cannot be sustained.* ***In the case of Meera Cotton & Synthetic Mills (P) Ltd. (supra) the Bombay Bench of the ITAT after considering the decision of the Hon'ble Supreme Court in the case of Synco Industries Ltd. (supra) had clearly held that the stage at which set off has to be done is only after***

aggregation of income under all heads. The CIT(A) did not agree with this reasoning of the ITAT. The facts of the present case are clearly identical to the facts, as it prevailed in the case of Meera Cotton & Synthetic Mills (P) Ltd. (supra). *The CIT(A) being an authority lower in the tier of authorities under the Act to that of the ITAT, is*

bound to follow the decision of the ITAT. In our view, the CIT(A) in the present case has for no valid reason refused to follow the decision of the Hon'ble ITAT".

15. Further, in the case of Meera Cotton & Synthetics Mills (P) Ltd (Supra), the Coordinate Bench of the Tribunal has held as under:

"9. Section 80A(1) provides that in computing total income of the assessee, there shall be allowed from the gross total income the deductions specified in sections 80-C to 80-U. Sub-section (2) further provides that the aggregate amount of deductions under this Chapter shall not in any case exceed the gross total income of the assessee. The gross total income has been defined under section 80B (5) to mean 'the total income computed in accordance with the provisions of this Act, before making any deduction under this Chapter.' It therefore follows that the primary step for considering the grant of deductions under Chapter VI-A is to determine the gross total income, which, in turn, is computed by aggregating the income from all the sources in this year after

adjusting the losses of the current year under any head. The brought forward loss or unabsorbed depreciation etc., are also reduced. The resultant figure is determined as gross total income. To put it simply gross total income is the income available at the disposal of the assessee immediately before allowing deductions under Chapter VI-A. If the gross total income is say Rs. 100 and the assessee is entitled to deduction under

section 80-IB at Rs. 150, then the amount of deduction under section 80-IB will be restricted to Rs. 100 as per the mandate of section 80A which provides that the deductions shall be allowed from the gross total income and the aggregate amount of all the deductions shall not in any case exceed the gross total income of the assessee. If however the amount of eligible relief under section 80-IB is say Rs. 90, then full amount will be eligible for deduction because the amount of the eligible relief does not exceed the gross total income. Therefore it is mandatory to work out the eligible amount of deduction under various sections of Chapter VI-A individually and then such aggregate amount has to be restricted to the amount of gross total income as computed under section 80B(5), which means the income available after adjusting all the brought forward losses and unabsorbed depreciation etc.

……

17. Respectfully following the above decisions, we hold that the loss of the eligible units cannot be set off against the profits of other eligible units.

18. As regards the third ground of the appeal against the observations of the CIT (A) that it is only the business income of the eligible unit and not the gross total income eligible for deduction u/s 80IA of the Act, we find that the case law relied upon by the assessee and in support of ground No.2 are also applicable to this issue. Respectfully following the same, we delete the findings of the CIT (A).

Thus, the contention raised by Ld. DR of setting off losses of one unit with the profit of other units should be rejected as without merits.

3. *Further, Ld. DR submitted that in terms of section 80-IA(5) of the Act, the Assessee is not paying tax on the profits of eligible unit as well as claiming set-off of such income/profits against the GTI. Thus, Ld. DR is alleging that the Assessee is claiming*

double deduction of same income which is not permitted by placing reliance on the Hon'ble SC decision in the case of Escorts Ltd. (1993) 199 ITR 43 (SC).

Our submission:

a. *It is respectfully submitted, that the Ld. DR is misinterpreting the provisions of sub-section 5 of section 80-IA of the Act.* ***The scope of section 80-IA(5) of the Act is limited only to the determination of the quantum of deduction u/s. 80-IA of the Act****. And that provisions of sub-section (5) of section 80-IA cannot be read for the purpose of allowability of deduction from the 'gross total income'. Reliance is placed on the Hon'ble SC decision in the case of Reliance Energy Ltd. (supra) wherein a clear distinction has been brought out by the Hon'ble Apex Court with respect to computation of deduction u/s. 80-IA of the Act and the allowability of deduction.*

b. *Further, Ld. DR alleged that the Assessee is claiming double deduction one by not paying tax on the income derived from 4 eligible units and secondly by claiming set-off of the same against income from other heads of income to the extent of GTI. It is hereby submitted that for the AY 2013-14, the quantum of deduction is arrived at by applying the provisions of section 80-IA(5) of the Act whereas for the allowability of deduction under Chapter VIA, provisions of section 80A(1) of the Act is applied, which categorically states that in computing the total income of an Assessee, deduction specified in sections 80C to 80U of the Act shall be allowed from the gross total income. Thus, the reference drawn by Ld. DR with respect to computation of deduction and allowability of deduction is completely misplaced.*

c. *Further, reliance placed by Ld. DR on the decision of Hon'ble SC in the case of Escorts Ltd. (supra) is distinguishable on facts and the circumstances of the present case. In the facts of Escorts Ltd.'s case, it was held that the deduction claimed u/s. 35(1)(iv) of the Act with respect to expenditure incurred on scientific research shall not be allowed again u/s. 32 of*

the Act i.e. Depreciation, in respect of the said asset as provided u/s. 35(2)(iv) of the Act as it will lead to double deduction which is not permissible under the law. Ld. DRs reliance on section 35 and 32 of the Act cannot be equated with the deduction allowable under Chapter VIA of the Act. With respect to the facts of the Assessee's case, there is no question of double deduction u/s. 80-IA of the Act as the allowability of deduction under chapter VIA is governed by section 80A(1) and similar deduction is not allowed under any other provisions of the Act. Thus, the reliance on the judgement of Escorts Ltd. (supra) is totally misplaced by the Ld. DR and is not applicable to the facts of the Assessee's case.

d. *Moreso, even if the assessee computes deduction u/s. 80IA,* ***there is no guarantee that the benefit of deduction will be granted to the assessee.*** *Since, the deduction will be granted only if there is a positive GTI (which comprises of all the heads of income). As per the computation mechanism u/s. 80-IA there can be a claimable amount, but if the GTI is a negative figure, the assessee will not be granted deduction as per section 80A of the Act (since the deduction has to be restricted to GTI). Hence there is no question of double deduction. Your Honours attention is invited to the facts of AY 2016-17 itself, refer to table below:*

Particulars	***Amount (Rs.)***
Income from Business or Profession	*(375,711,970)*
Income from House Property	*1,167,323*
Short term Capital Gains	*26,671,450*
Income from other sources	*157,480,998*
Gross Total Income	***(190,392,200)***
Deduction computed u/s. 80-IA at Rs. 589,89,757 but restricted to NIL on account of negative GTI	***NIL***

4. *Ld. DR further in his submissions tried to distinguish the Hon'ble SC decision in the case of Reliance Energy (supra). We would*

like to specifically highlight each point of distinction and our rebuttals as follows:

Para /Page No. of Ld. DR submission	***Submission of Ld. DR***	***Rebuttal by Respondent Assessee***
Para 14 / Page 7	*Ld. DR mentions that Hon'ble SC listed down certain conditions to be fulfilled in order to claim 80-IA deduction from GTI:* *1. There should be positive income under the head 'PGBP';* *2. Computation of deduction is governed by section 80-IA(5) and allowability u/s. 80-IA(1) of the Act;* *3. Then only, assessee is eligible to claim such amount as deduction against the GTI.*	*It is submitted that:* *1. Hon'ble SC no where mentioned that there is any pre-condition of having positive income under PGBP forming part of GTI to claim deduction u/s. 80-IA of the Act.* *2. The law provides for computation of deduction as per section 80-IA(5) of the Act – which condition has been fulfilled by the Respondent Assessee (refer to charts filed and Form 10CCBs) and also allowability of the deduction should be as per section 80A(1) of the Act which provides for deductions to be allowed from GTI and there is no requirement that*

		GTI should include positive business income for claim of deduction u/s 80IA of the Act.
Para 15 / Page 8	*Ld. DR submitted that in the facts of the Hon'ble SC decision, there was no loss under the head PGBP whereas the facts in the Assessee's case is different as it has losses under head PGBP.*	*It is submitted that the difference in such factual matrix has no relevance to the issue in dispute as the issue is limited only to the extent of, whether deduction u/ 80-IA is to be restricted to business income or to the GTI.* ***Further, the Department is not relying upon what has been decided in Reliance Energy's case, but on what logically follows from the said precedent.*** *The inferences drawn on the basis of Reliance Energy decision (supra) are thus, in our considered view, misplaced.*
Para 16 to 18 / Page 8-9	*Ld. DR submitted that the Hon'ble SC is laying down condition of having a positive income under the*	*It is respectfully submitted, that the Ld. DR has grossly erred in interpreting the Hon'ble SC*

	head PGBP (forming part of GTI) to claim 80-IA deduction from the GTI which also consists of income from other heads of income.	*decision and on an imaginary and assumptive basis brought out a condition of having positive PGBP income forming part of GTI to claim deduction u/s. 80-IA of the Act. The said condition is neither coming out of from the provision of section 80-IA nor coming out from Hon'ble SC judgement or any other judgements on this issue.*
Para 19 / Page 9 to 11	*Ld. DR relied on the decision of Hon'ble SC in the case of IPCA Laboratory Ltd. vs. DCIT (2004) 135 Taxman 594 (SC) wherein it has been held that:* *"The word "profit" in sub-sections (1) and (3)(a) and (b) of section 80HHC means a positive profit. In other words, if there is a loss then no deduction would be available under sub-section (1) or*	*It is submitted that the reliance placed by Ld. DR on the decision of IPCA Laboratory Ltd. is applicable only for the purpose of calculating deduction u/s. 80HHC of the Act. It is submitted that section 80HHC(3)(c) talks about adjusted profits of export business which means the profit after adjusting losses, if any from any other export*

	sub-section (3)(a) or sub-section (3)(b). ***In arriving at the figure of positive profit, both the profits and the losses will have to be considered. If the net figure is a positive profit then the assessee will be entitled to deduction; if the net figure is a loss then the assessee will not be entitled to deduction"***	*business.* *No such concept of adjusted profit from different units is provided u/s. 80-IA of the Act. As decided by various case laws, it is submitted that the* ***losses of the eligible units cannot be set-off against the profits of other eligible units*** *for the purpose of calculating 80-IA deduction (refer to our submission made at para 2 above).* *Further, in the facts of Respondent Assessee also there are losses in certain units but those are not taken into consideration for the purpose of calculation of 80-IA deduction. Only those units having profits are taken into consideration for calculation of deduction u/s. 80-IA of the Act and*

		Assessee himself has not claimed deduction for those units which are having losses. (refer to charts filed along with this submission)
Para 20 / Page 11	*Ld. DR further relied on the decisions of:* *1. Liberty India Ltd. vs CIT (2009) 317 ITR 218 (SC)*	*It is submitted that:* *1) Hon'ble SC in Liberty India's case held that section 80-IA(5) of the Act deals with the computation of deduction wherein the profits are computed as if such eligible business is the only source of income of the Assessee.* *The Assessee in present case has also calculated the deduction u/s. 80-IA for each eligible unit in similar way as stated by Hon'ble SC in the Liberty India's decision. (refer to charts*

		filed)
	2) Synco Industries Ltd. vs AO (2008) 299 ITR 444 (SC)	*Hon'ble SC in Synco's case held that if the 'gross total income' of the Assessee is 'NIL' then it would not be entitled to deductions under chapter VIA. This is precisely the Assessee's submission in present case that the deduction has to be restricted to GTI and in case of loss, no deduction is allowed (refer to Para 3(d) at Page 8 above).* *Further, it was held that while computing quantum of deduction under section 80-I(6), profits derived from an industrial undertaking should be taken as the only source of income in order to arrive at deduction under Chapter VI-A. But however, non*

		obstante clause appearing in section 80-I(6) is applicable only to the quantum of deduction, whereas section 80B(5) of the Act deals with the allowability of deduction from the gross total income. *Infact, assessee has computed the deduction u/s. 80-IA by treating each eligible business as a separate unit as per the principles laid down in the decision of Synco (supra).*
	3) A.M. Moosa vs CIT (2007) 163 Taxman 741 (SC)	*3) The Hon'ble SC in the A.M. Moosa decision is applicable only for the provisions relating to the calculation of deduction u/s. 80HHC of the Act.* *Refer to rebuttals at Page 10 above against the case of IPCA*

		Laboratory (supra).
	4) CIT vs Shirke Construction Equipments Ltd. (2007) 161 Taxman 212	*The Hon'ble SC in the Shirke Construction decision is applicable only for the provisions relating to the calculation of deduction u/s. 80HHC of the Act.* *Refer to rebuttals at Page 10 above against the case of IPCA Laboratory (supra).*
Para 22 / Page 11	*Ld. DR reiterated that the Assessee cannot claim the benefit of Hon'ble SC judgement in the case of Reliance Energy (supra) in bits and pieces.*	*We agree with the submission of Ld. DR and would like to reiterate that* ***the facts of Reliance Energy (supra) and Assessee are similar and the decision held by Hon'ble Apex court should be applied in its entirety.*** *A chart showing similarity of facts between assessee and in the case of*

		Reliance Energy is annexed as ***Attachment-1 below.***
Para 25 / Page 12	*Ld. DR submitted that the procedure as to how to allow incentive/deduction towards the income derived from the eligible business is embedded in the machinery provisions of section 80-IA of the Act.*	*It is submitted that the section 80-IA & section 80AB of the Act provides mechanism for computation of deduction whereas the quantum of deduction allowable to the assessee from the GTI is embedded in section 80A of the Act.*
Para 27 / Page 13	*Ld. DR further submits that in a situation when there is no income from eligible business, the assessee will not pay tax and further mentions that though in Assessee's case there is income from eligible business but due to set-off of same against other business income, the assessee need not pay tax on income derived from eligible business.*	*It is submitted that Ld. DR is trying to bring out a hypothetical situation when there is no business income, which is not the case of Assessee, as the Assessee has earned income from eligible business units.* *Ld. DR further tries to bring out a situation where there is income*

		earned from eligible business but is set-off against other business income and therefore assessee does not pay tax on such income. It is submitted that the Ld. DR is trying to blow hot and cold with theories and not support the same with the facts of the Assessee's case as well any judicial precedent on this aspect.

5. *Ld. DR submitted that the facts of AY 2014-15 are identical to that of AY 2013-14 (refer to Para 30 to 32 / Page 14-15). It may kindly be noted that the above rebuttals made may kindly be applied to Ld. DRs contention for AY 2014-15 also.*

6. *Further, for AY 2016-17, it is submitted that the Respondent Assessee is having a loss at the Gross Total Income stage and therefore no deduction u/s. 80-IA is claimed for the concerned year. Accordingly, there is no dispute for the AY 2016-17 before Your Honours.*

The Respondent Assessee most humbly submits that the above submission may kindly be taken on record for effective disposal of appeal. In case, Your Honours require any further details/clarification/documents in support of the case above, we request for an opportunity to be given in the interest of justice.

7.1 In addition to the written synopsis, he submitted that the Hon'ble Supreme Court of India has decided similar issue in favour of the assessee and filed a copy of the same. Further, he submitted that the CIT(A) has rightly allowed assessee's claim of deduction u/s 80IA of the Act following the decision of the coordinate bench in assessee's own case cited supra.

8. In the rejoinder, the ld. DR submitted that the case law relied upon by the ld. AR is not applicable to the case of the assessee on the ground that the profit element from the eligible units are not included in the gross total income of the assessee in the case decided by the Hon'ble Supreme Court, on which reliance placed by the ld. AR. He submitted that in the case decided by the Hon'ble Supreme Court, there was a profit element from the eligible units, which included in the gross total income of the assessee and, therefore, the Hon'ble Supreme Court has decided the issue in favour of the assessee. In paras 12, 13 & 14 of its judgement, the Hon'ble Supreme Court has clearly stated that there must be positive income from the eligible units to claim deduction u/s 80IA, whereas, in assessee's case, there is no such instance as the assessee has shown loss of business income of Rs. 22 crores, which is clear from the computation of income submitted by the assessee after setting off of profit/loss from the eligible business and non-eligible business; the assessee's income is negative. He, therefore, submitted that it cannot be said that the profit of the

eligible units are included in the gross total income of the assessee. The provisions of section 80IA(i) & (ii) clearly state that computation of deduction from the eligible units is to be taken as a stand alone basis, it means, that only source of income.

9. We have considered the rival submissions and perused the material on record as well as orders of revenue authorities and also the written submissions filed by both the counsels. We observe from the order of assessment and the paper books filed by both the parties, the assessee has computed the business loss of Rs. 22,70,87,917/- as per para No. 6 of the written submissions of ld. DR quoted supra.

9.1 It is clear from the documents submitted by the assessee and negative income computed by the assessee, the assessee has netted off the profits from the eligible units and non-eligible units and accordingly, the net loss from the business was shown at Rs. 22.71 crores, which has been shown by the assessee in the return of income as business loss. He has further claimed deduction from the gross total income from the profit of eligible units u/s 80IA and in Form 10CCB issued by the CA in this regard, which is also placed on record. The dispute between the assessee and the revenue is only, whether the assessee can claim deduction u/s 80IA from the gross total income of the assessee. Similar issue has been decided by the Hon'ble Supreme Court in the case of CIT Vs. Reliance Energy Ltd., [2021] 127 taxmann.com 69, on which

reliance placed by the ld. A.R. & DR. The entire decision is reproduced as under for the sake of clarity.

> *"1. By an order of assessment dated 31.01.2005, the Assessing Officer restricted the eligible deduction under Section 80-IA of the Income Tax Act, 1961 (hereinafter "the Act") to the extent of 'business income' only. On 23.03.2006, the Commissioner of Income-Tax (Appeal)-I (hereinafter "the Appellate Authority") partly allowed the Appeal filed by the Assessee and reversed the order of the Assessing Officer on the issue of the extent of deduction under Section 80-IA of the Act. The Income Tax Appellate Tribunal (hereinafter "the Tribunal"), upheld the decision of the Appellate Authority on the issue of deduction under Section 80-IA. The High Court refused to interfere with the Tribunal's order as far as the issue on deduction under Section 80-IA is concerned. Therefore, this Appeal by the Revenue.*
>
> *2. This Appeal pertains to the assessment year 2002-03 for which the income-tax return was filed by the Assessee on 31.10.2002 declaring the total income as 'NIL'. The return was subsequently revised on 06.12.2002 and thereafter, on 30.03.2004. At the time of the assessment proceedings, the Assessee submitted a revised computation of income by revising its claim of deduction under Section 80-IA of the Act.*
>
> *3. The Assessee is in the business of generation of power and also deals with purchase and distribution of power. The Assessee-Company generated power from its power unit located at Dahanu. In respect of deduction under Section 80- IA of the Act, the Assessee was asked to explain as to why the deduction should not be restricted to business income, as had been the stand of the Revenue for the assessment year 2000-01. The Assessee had revised its claim under Section 80-IA of the Act to Rs. 546,26,01,224/-, having admitted that there was an error in calculation of income-tax depreciation. The Assessing Officer considered the revised claim of the Assessee under Section 80-IA and determined the amount eligible for deduction under Section 80-IA at Rs. 492,78,60,973/- against the*

Assessee's claim of Rs. 546,26,01,224/-. However, the Assessing Officer stated in the assessment order that the actual deduction allowable shall be to the extent of 'income from business' as per provisions of Section 80AB of the Act. The 'business income' of the Assessee was computed at Rs. 355,74,73,451/- and the 'gross total income' at Rs. 397,37,70,178/-. Inclusion of 'income from other sources' of Rs. 41,62,96,727/- in the 'gross total income' and deduction claimed under Chapter VI- A of the Act against such 'gross total income' was not accepted by the Assessing Officer. The Assessing Officer rejected the claim of the Assessee for allowing deduction under Section 80-IA of the Act, along with other deductions available to the Assessee, to the extent of 'gross total income' and restricted the deduction allowed under Section 80-IA at Rs.354,00,75,084/-, by limiting the aggregate of deductions under Sections 80-IA and 80-IB of the Act to 'business income' of the Assessee.

4. The Assessing Officer rejected the contention of the Assessee that Section 80AB of the Act is not applicable. It was held that Section 80AB of the Act makes it clear that for the purposes of deduction in respect of certain incomes, deduction had to be given on the income of the nature specified in the relevant section and allowed against income of that nature alone. The Assessing Officer elaborated on this point by stating that 'income from business' alone had to be considered for allowing any deduction computed on 'income from business' and using the same analogy, deduction computed on 'income from other sources' should be allowable against 'income from other sources' only. As the deduction under Section 80-IA of the Act pertains to profits and gains from a business undertaking, the deduction is allowable only against 'income from business'. It was held by the Assessing Officer that deduction computed under Section 80-IA of the Act could not be allowed against any source other than business. The Assessing Officer also relied upon the words 'that nature' and 'shall alone' in Section 80AB of the Act to hold that deduction under a relevant section has to be given to the extent of the income from that particular source only on which deduction is available. In the matter before us, this would mean that deduction under Section 80- IA

of the Act has to be allowed only to the extent of 'income from business'.

5. It was argued by the Assessee before the Appellate Authority that the conclusion of the Assessing Officer on deduction under Section 80-IA of the Act being restricted to 'business income' needs to be set aside. The Assessee contended that the observation of the Assessing Officer that deduction under a particular section is permissible only against income under that particular head was erroneous. Deductions related to various incomes under various sections of Chapter VI-A have to be quantified in accordance with the respective sections. The Assessee urged before the Appellate Authority that the deductions so quantified under various sections under Chapter VI-A have to be aggregated and allowed against the 'gross total income'. Finally, the submission of the Assessee before the Appellate Authority was that restricting the deduction under Section 80-IA of the Act to the extent of 'business income' was unjustified. With reference to Section 80AB, the Assessee contended that the operation of the said section related only to quantification of deduction on the basis of net income.

6. The Appellate Authority partly allowed the Appeal filed by the Assessee by an order dated 23.03.2006 and reversed the finding of the Assessing Officer on the issue of deduction under Section 80-IA of the Act for the reasons stated hereinafter. In respect of Section 80AB of the Act, the Appellate Authority referred to the background of insertion of the said section with effect from 01.04.1981. The Appellate Authority referred to Circular No. 281 dated 22.09.1980 of the Central Board of Direct Taxes (CBDT) wherein the reason for introduction of Section 80AB was explained. The Supreme Court in the case of Cloth Traders (P) Ltd. v. Additional CIT, Gujarat-I1 held that deduction under Section 80M of the Act, which deals with deduction in respect of certain inter-corporate dividends, was allowable on the gross amount of the dividends received. It was decided to undo the decision of this Court as it was contrary to the legislative intent, which was that deduction under Section 80M was to be allowed on the dividend income as computed under the Act, i.e., on the net

income after deduction of admissible expenses. The Appellate Authority proceeded to hold that Section 80AB places a ceiling on the quantum of deductions in respect of incomes contained in Part-C of Chapter VI-A. Such deductions are to be computed on the net eligible income, which will be deemed to be included in the gross total income. The Appellate Authority observed that Section 80AB is limited to determining the quantum of deductible income included in the gross total income. Following a decision of the Income Tax Appellate Tribunal, Mumbai dated 25.04.2003 in Royal Cushion Vinyl Products Ltd. v. Dy. Commissioner of Income Tax, 1 (1979) 3 SCC 538 Mumbai (ITA No. 770/MUM/98), the Appellate Authority set aside the order of the Assessing Officer on this count. The Appellate Authority directed the Assessing Officer not to restrict the deduction admissible under Section 80-IA of the Act to income under the head 'business'. The Assessing Officer was further directed to aggregate the deduction under Section 80-IA of the Act with the other deductions available to the Assessee and then to allow deductions of such aggregate amount to the extent of 'gross total income'. The order of the Appellate Authority was affirmed by the Tribunal and the High Court on this issue. Aggrieved thereby, the Revenue has come in Appeal.

7. The contention on behalf of the Revenue before us is that the Assessing Officer was right in holding that the deduction under Section 80-IA of the Act should be restricted to 'business income' only. Mr. Arijit Prasad, learned Senior Counsel appearing on behalf of the Revenue, submitted that Section 80AB of the Act contemplates deductions in respect of incomes against income of the nature specified in the relevant section. He further submitted that Section 80-IA(5) makes it clear that the determination of quantum of deduction under sub-section (1) of Section 80-IA should be on the basis that the source of income from the eligible business was the only source of income of an assessee and therefore, the deduction so determined should be allowed only against 'business income'. According to him, the phrase 'derived … from' in sub-section (1) of Section 80-IA of the Act indicates that the computation of deduction is restricted only to the profits and gains from the eligible

business. He relied upon the judgment of this Court in Cambay Electric Supply Industrial Co. Ltd. v. CIT 2, followed in Synco Industries Ltd. v. Assessing Officer, Income Tax, Mumbai & Anr. 3 and Pandian Chemicals Ltd. v. Commissioner of Income Tax, Madurai4.

8. In response, the Assessee supported the order passed by the Appellate Authority which was upheld by the Tribunal and the High Court. It is the argument of Mr. Ajay Vohra, learned Senior Counsel appearing on behalf of the Assessee, that Section 80AB of the Act is with reference to computation of deduction on the basis of net income. He submitted that there is no indication in sub-section (5) of Section 80-IA that the deduction under sub-section (1) is restricted to 'business income' only. On the other hand, according to him, sub- section (5) deals with determination of the quantum of deduction by treating eligible business as the only source of income of the Assessee. Sub-section (5), therefore, is 2 (1978) 2 SCC 644 3 (2008) 4 SCC 22 4 (2003) 5 SCC 590 concerned with computation of the deduction, which is at a stage prior to allowing the deduction so computed. ***He submitted that there is no dispute that the computation of deduction is only from the eligible business.*** *The claim of the Assessee, as accepted by the Appellate Authority, is that there is no restriction on taking into account income from any other source while allowing the deduction computed under Section 80-IA, subject to the aggregate of all deductions under Chapter VI-A not exceeding the 'gross total income'. He relied upon judgments of this Court in CIT (Central), Madras v. Canara Workshops (P) Ltd., Kodialball, Mangalore5 and Synco Industries (supra) to argue that sub-section (5) of Section 80-IA of the Act does not restrict permissible deduction under sub-section (1) to be allowed against 'business income' only. The learned Senior Counsel for the Assessee relied upon the judgment of the Bombay High Court in Commissioner of Income-tax v. Tridoss Laboratories Ltd.6 to argue that the Appeal should not be allowed.*

9. The controversy in this case pertains to the deduction under Section 80-IA of the Act being allowed to the extent of

'business income' only. The claim of the Assessee that deduction under Section 80-IA should be allowed to the 5 (1986) 3 SCC 538 6 [2010] 328 ITR 448 (Bombay) extent of 'gross total income' was rejected by the Assessing Officer. It is relevant to reproduce Section 80AB of the Act which is as follows:

"80AB. Deductions to be made with reference to the income included in the gross total income. — Where any deduction is required to be made or allowed under any section included in this Chapter under the heading "C. — Deductions in respect of certain incomes" in respect of any income of the nature specified in that section which is included in the gross total income of the assessee, then, notwithstanding anything contained in that section, for the purpose of computing the deduction under that section, the amount of income of that nature as computed in accordance with the provisions of this Act (before making any deduction under this Chapter) shall alone be deemed to be the amount of income of that nature which is derived or received by the assessee and which is included in his gross total income." As stated above, Section 80AB was inserted in the year 1981 to get over a judgment of this Court in Cloth Traders (P) Ltd. (supra). The Circular dated 22.09.1980 issued by the CBDT makes it clear that the reason for introduction of Section 80AB of the Act was for the deductions under Part C of Chapter VI-A of the Act to be made on the net income of the eligible business and not on the total profits from the eligible business. A plain reading of Section 80AB of the Act shows that the provision pertains to determination of the quantum of deductible income in the 'gross total income'.

Section 80AB cannot be read to be curtailing the width of Section 80-IA. It is relevant to take note of Section 80A(1) which stipulates that in computation of the 'total income' of an assessee, deductions specified in Section 80C to Section 80U of the Act shall be allowed from his 'gross total income'. Sub-section (2) of Section 80A of the Act provides that the aggregate amount of the deductions under Chapter VI-A shall not exceed the 'gross total income' of the Assessee. We are in agreement with the Appellate Authority that Section

80AB of the Act which deals with determination of deductions under Part C of Chapter VI-A is with respect only to computation of deduction on the basis of 'net income'.

10. Sub-section (1) and sub-section (5) of Section 80-IA which are relevant for these Appeals are as under:

"80-IA. Deductions in respect of profits and gains from industrial undertakings or enterprises engaged in infrastructure development, etc.— (1) Where the gross total income of an assessee includes any profits and gains derived by an undertaking or an enterprise from any business referred to in sub-section (4) (such business being hereinafter referred to as the eligible business), there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction of an amount equal to hundred per cent. of the profits and gains derived from such business for ten consecutive assessment years.

***** (5) Notwithstanding anything contained in any other provision of this Act, the profits and gains of an eligible business to which the provisions of sub- section (1) apply shall, for the purposes of determining the quantum of deduction under that sub-section for the assessment year immediately succeeding the initial assessment year or any subsequent assessment year, be computed as if such eligible business were the only source of income of the assessee during the previous year relevant to the initial assessment year and to every subsequent assessment year up to and including the assessment year for which the determination is to be made."*

11. ***The essential ingredients of Section 80-IA (1) of the Act are:***

a) the 'gross total income' of an assessee should include profits and gains;
b) those profits and gains are derived by an undertaking or an enterprise from a business referred to in sub-section (4);

c) the assessee is entitled for deduction of an amount equal to 100% of the profits and gains derived from such business for 10 consecutive assessment years; and
d) in computing the 'total income' of the Assessee, such deduction shall be allowed.

12. *The import of Section 80-IA is that the 'total income' of an assessee is computed by taking into account the allowable deduction of the profits and gains derived from the 'eligible business'. With respect to the facts of this Appeal, there is no dispute that the deduction quantified under Section 80-IA is Rs.492,78,60,973/-. To make it clear, the said amount represents the net profit made by the Assessee from the 'eligible business' covered under sub-section (4), i.e., from the Assessee's business unit involved in generation of power. The claim of the Assessee is that in computing its 'total income', deductions available to it have to be set-off against the 'gross total income', while the Revenue contends that it is only the 'business income' which has to be taken into account for the purpose of setting-off the deductions under Sections 80-IA and 80-IB of the Act. To illustrate, the 'gross total income' of the Assessee for the assessment year 2002-03 is less than the quantum of deduction determined under Section 80-IA of the Act. The Assessee contends that income from all other heads including 'income from other sources', in addition to 'business income', have to be taken into account for the purpose of allowing the deductions available to the Assessee, subject to the ceiling of 'gross total income'. The Appellate Authority was of the view that there is no limitation on deduction admissible under Section 80-IA of the Act to income under the head 'business' only, with which we agree.*

13. The other contention of the Revenue is that sub-section (5) of Section 80-IA refers to computation of quantum of deduction being limited from 'eligible business' by taking it as the only source of income. It is contended that the language of sub-section (5) makes it clear that deduction contemplated in sub-section (1) is only with respect to the income from 'eligible business' which indicates that there is a cap in sub-section (1) that the deduction cannot exceed the 'business income'. On the

other hand, it is the case of the Assessee that sub-section (5) pertains only to determination of the quantum of deduction under sub-section (1) by treating the 'eligible business' as the only source of income. It was submitted by Mr. Vohra, learned Senior Counsel, that the final computation of deduction under Section 80-IA for the assessment year 2002-03 as accepted by the Assessing Officer, was arrived at by taking into account the profits from the 'eligible business' as the 'only source of income'. He submitted that, however, sub-section (5) is a step antecedent to the treatment to be given to the deduction under sub- section (1) and is not concerned with the extent to which the computed deduction be allowed. To explain the interplay between sub-section (5) and sub-section (1) of Section 80-IA, it will be useful to refer to the facts of this Appeal. The amount of deduction from the 'eligible business' computed under Section 80-IA for the assessment year 2002-03 is Rs. 492,78,60,973 /-. There is no dispute that the said amount represents income from the 'eligible business' under Section 80-IA and is the only source of income for the purposes of computing deduction under Section 80-IA. The question that arises further with reference to allowing the deduction so computed to arrive at the 'total income' of the Assessee cannot be determined by resorting to interpretation of sub- section (5).

14. It will be useful to refer to the judgment of this Court relied upon by the Revenue as well as the Assessee. In Synco Industries (supra), this Court was concerned with Section 80-I of the Act. Section 80-I(6), which is in pari materia to Section 80-IA(5), is as follows:

" 80-I(6) Notwithstanding anything contained in any other provision of this Act, the profits and gains of an industrial undertaking or a ship or the business of a hotel or the business of repairs to ocean-going vessels or other powered craft to which the provisions of sub-section (1) apply shall, for the purposes of determining the quantum of deduction under sub-

section (1) for the assessment year immediately succeeding the initial assessment year or any subsequent assessment year, be computed as if such industrial undertaking or ship or the

business of the hotel or the business of repairs to ocean-going vessels or other powered craft were the only source of income of the assessee during the previous years relevant to the initial assessment year and to every subsequent assessment year up to and including the assessment year for which the determination is to be made." It was held in Synco Industries (supra) that for the purpose of calculating the deduction under Section 80-I, loss sustained in other divisions or units cannot be taken into account as sub-section (6) contemplates that only profits from the industrial undertaking shall be taken into account as it was the only source of income. Further, the Court concluded that Section 80-I(6) of the Act dealt with actual computation of deduction whereas Section 80-I(1) of the Act dealt with the treatment to be given to such deductions in order to arrive at the total income of the assessee. The Assessee also relied on the judgment of this Court in Canara Workshops (P) Ltd., Kodialball, Mangalore (supra) to emphasize the purpose of sub-section (5) of Section 80-IA. In this case, the question that arose for consideration before this Court related to computation of the profits for the purpose of deduction under Section 80-E, as it then existed, after setting off the loss incurred by the assessee in the manufacture of alloy steels. Section 80-E of the Act, as it then existed, permitted deductions in respect of profits and gains attributable to the business of generation or distribution of electricity or any other form of power or of construction, manufacture or production of any one or more of the articles or things specified in the list in the Fifth Schedule. It was argued on behalf of the Revenue that the profits from the automobile ancillaries industry of the assessee must be reduced by the loss suffered by the assessee in the manufacture of alloy steels. ***This Court was not in agreement with the submissions made by the Revenue. It was held that the profits and gains by an industry entitled to benefit under Section 80-E cannot be reduced by the loss suffered by any other industry or industries owned by the assessee.***

15. In the case before us, there is no discussion about Section 80-IA(5) by the Appellate Authority, nor the Tribunal and the

High Court. However, we have considered the submissions on behalf of the Revenue as it has a bearing on the interpretation of sub-section (1) of Section 80-IA of the Act. We hold that the scope of sub-section (5) of Section 80- IA of the Act is limited to determination of quantum of deduction under sub-section (1) of Section 80-IA of the Act by treating 'eligible business' as the 'only source of income'.

Sub-section (5) cannot be pressed into service for reading a limitation of the deduction under sub-section (1) only to 'business income'. An attempt was made by the learned Senior Counsel for the Revenue to rely on the phrase 'derived ... from' in Section 80-IA (1) of the Act in respect of his submission that the intention of the legislature was to give the narrowest possible construction to deduction admissible under this sub-section. It is not necessary for us to deal with this submission in view of the findings recorded above. For the aforementioned reasons, the Appeal is dismissed qua the issue of the extent of deduction under Section 80-IA of the Act.

Civil Appeal No. 1327 of 2021, Civil Appeal No. 1329 of 2021, Civil Appeal No. 2537 of 2016, Civil Appeal No. 1408 of 2021 and Civil Appeal No. 1508 of 2021 are disposed of in terms of the above judgment.

Civil Appeal No. 1509 of 2021 is de-tagged as the questions arising therein are not related to the aforementioned issue."

9.2 Considering the elaborate written submissions of both the parties and the recent judgment of the Hon'ble Supreme Court in the case of CIT Vs. Reliance Energy Ltd., (supra), we deem it fit and proper to remit the issue back to the file of the AO with a direction to recalculate the deduction as per the provisions of section 80IA. Accordingly, ground No. 3 raised by the revenue on this issue in all the appeals under consideration is allowed for statistical purposes.

10. As regards, ground Nos. 1 & 2 regarding restricting the disallowance u/s 14A by the CIT(A), since the assessee had earned dividend income of Rs. 43,61,557/-, the CIT(A) has restricted the disallowance to that extent. Therefore, we do not find any infirmity in the decision of the CIT(A) and accordingly, upholding the same, we dismiss the ground raised by the revenue in all the appeals under consideration.

11. In the result, the appeals of the revenue are partly allowed for statistical purposes in above terms. A copy of this common order be placed in the respective case files.

Pronounced in the open court on 3rd September, 2021.

Sd/-	**Sd/-**
(S.S. GODARA)	**(L. P. SAHU)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Hyderabad, Dated: 3rd September, 2021.

kv

Copy to :

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2	*M/s NSL Renewable Power Pvt. Ltd., 8-2-684/2/A, NSL Icon, 4th Floor, Road No. 12, Banjara Hills, , Hyderabad – 500 034*
3	*CIT(A) – 4, Hyderabad.*
4	*Pr. CIT - 4, Hyderabad.*
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