

**INCOME TAX APPELLATE TRIBUNAL  
"G" BENCH, MUMBAI**

**SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 3975/Mum/2024  
(Assessment Year: 2018-2019)  
&  
C.O.No.205/Mum/2024  
(Assessment Year: 2018-2019)**

**Geecee Ventures Limited**

209-210, 195 NCPA Marg, Nariman Point,  
S.O. Mumbai - 400021,  
Maharashtra.  
[PAN: AAACG3914A]

..... **Appellant**  
Vs

**Deputy Commissioner of Income Tax  
Circle 2(1)(1), Mumbai**

5<sup>th</sup> Floor, Aayakar Bhavan, M. K. Road,  
Mumbai - 400020. Maharashtra

..... **Respondent**

**ITA No. 4119/Mum/2024  
(Assessment Year: 2018-2019)**

**Assistant Commissioner of Income Tax, Circle 2(1)(1), Mumbai**

Room No.575, 5<sup>th</sup> Floor, Aayakar Bhavan,  
M. K. Road, Mumbai - 400020. Maharashtra.

..... **Appellant**  
Vs

**Geecee Ventures Limited**

209-210, 195 NCPA Marg,  
Nariman Point,  
S.O. Mumbai - 400021,  
Maharashtra.  
[PAN: AAACG3914A]

..... **Respondent**

**Appearance**

For the Appellant/Assessee	: Shri Rahul Sarda
For the Respondent/Department	: Shri Bhangapatil Pushkaraj Ramesh

**Date**

Conclusion of hearing	: 24.03.2025
Pronouncement of order	: 30.05.2025

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**ORDER**

**Per Rahul Chaudhary, Judicial Member:**

1. This is a batch of three matters consisting of Cross-Appeals and Cross Objection filed by the Assessee in appeal preferred by the Revenue

pertaining to Assessment Year 2018-2019 arising from Order, dated 10/06/2024, passed by the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as the '**CIT(A)**'], under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as '**the Act**'], whereby the Ld. CIT(A) had disposed off the appeal preferred by the Assessee against the Assessment Order, dated 06/04/2021, passed under Section 143(3) read with Section 143(3A) and 143(3B) of the Act.

2. The Revenue has raised the following ground in ITA No. 4119/Mum/2024:

- "1. Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in deleting the disallowance of deduction under Section 80IA(4) claimed in the return at Rs.1,57,73,420/- but adjusted and disallowed u/s.143(1) in appeal against order u/s.143(3), ignoring the fact that the assessee had not appealed against adjusted of disallowance of deduction u/s.80IA made u/s.143(1) of the Act.*
- 2. Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in deleting the disallowance of deduction u/s.80IA claimed in the return at Rs.1,57,73,420/- adjusted and disallowed u/s.143(1) as the assessee had no business income included in the gross total income, specifically ignoring the fact that the net result of computation of the business income disclosed by assessee and included in the gross total income in the return was loss of Rs.63,26,867/-.*
- 3. Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in deleting the disallowance under s. 14A rw Rule 8D(2) of Rs.83,93,835/-, ignoring the clarificatory amendments made in section 14A by Finance Act 2022 by inserting Explanation, and the total disallowance u/s 14A did not exceed the exempt income of Rs. 24,65,29,206/- and computation of monthly average of opening and closing investments which was computed by the assessee itself at Rs 130,23,93,150/- whereas the assessee had computed the disallowable expenses u/s 14A only at Rs 46,67,450/- excluding the strategic investments in group companies?*
- 4. Whether on the facts and in the circumstances of the case and in*

*law the Ld. CIT(A) erred in deleting the adjustment made in the computation of book profit. at Rs. 83,93,835/- by increasing the net profit as per P&L account by expenses related to except income as per clause 'f' of Explanation 1 to s.115JB?"*

3. The Assessee has raised the following ground in CO. No.205/Mum/2024:

- "1. The CIT(A) ought to have appreciated that the investments in 'Growth' option of mutual funds could not yield any exempt income, and hence, the same were liable to be excluded from 'Investments' for the purpose of computation of disallowance under section 14A of the Act r/w Rule 8D of the Rules.*
- 2. The CIT(A) ought to have appreciated that the investments in Debts mutual funds could not yield any exempt income, and hence, the same were liable to be excluded from 'Investments' for the purpose of computation of disallowance under Section 14A of the Act r/w Rule 8D of the Rules"*

4. The Assessee has raised the following ground in ITA No. 3975/Mum/2024:

- "1. On the facts and in circumstances of the case and in law, the Hon'ble Commissioner of Income-tax (Appeal) (hereinafter referred as Hon'ble CIT erred in concluding the Learned Assessing Officer (hereinafter referred as Ld. Assessing Officer) is correct in denying the part credit for Dividend Distribution Taxes amounting to Rs.46,14,400 and levying interest of Rs.18,91,903 thereon. Appellant has paid Dividend Distribution Tax on November 7, 2017 and copy of challan is on record with lower tax authorities along with complete details of dividend distribution during the relevant financial year and which is appropriately disclosed in the return of income. The facts of the caselaws relied on by the Hon'ble CIT is not identical in the present case and hence Hon'ble CIT erred in upholding the computation of income and taxes thereon prepared by the Ld. AO."*

5. The relevant facts in brief are that the Assessee filed return of income for the Assessment Year 2018-2019 on 04/10/2018 declaring income of INR.6,89,82,370/-. The case of Assessee was selected for scrutiny and notice under Section 143(2) of the Act was issued to the Assessee

on 22/09/2019. During the pendency of the assessment proceedings the return filed by the Assessee was processed under Section 143(1) of the Act intimation, dated 02/02/2020, was issued to the Assessee. Subsequently, the Assessing Officer completed the assessment under Section 143(3) read with Sections 143(3A) and 143(3B) of the Act at income of INR.9,47,60,542/- after making addition/disallowance of INR.83,93,835/- under Section 14A of the Act read with Rule 8D of the Income Tax Rules 1962 [for short '**IT Rules**']. The Assessing Officer also increase the Book Profits computed under Section 115JB of the Act by the aforesaid disallowance of INR.83,93,835/- made under section 14A of the Act.

6. Being aggrieved the Assessee preferred appeal before the CIT(A) challenging the addition/disallowance made by the Assessing Officer under Section 14A of the Act read with Rule 8D of the IT Rules. The Assessee also raised following grounds before the CIT(A) challenging the variation from the returned income in the Computation Sheet attached to the Assessment Order issued under Section 143(3) of the Act as well as the Intimation issued under Section 143(1) of the Act:

- (a) Denial of deduction of INR.1,57,73,420/- claimed by the Assessee under Section 80IA of the Act
- (b) Non grant of credit of dividend distribution tax of INR.46,14,400/- paid on 07/11/2017 and the consequential levy of interest under Section 115P of the Act and raising of demand of INR.65,06,301/-

The appeal preferred by the Assessee was dispose off as partly allowed by the CIT(A) vide order, dated 10/06/2024.

7. Now, both the sides, have preferred cross-appeals before the Tribunal while the Assessee has filed Cross Objections in the appeal preferred by the Revenue.

8. We have heard the rival submissions and have perused the material on record including the judicial precedents cited during the course of the hearing.

**ITA No.4119/Mum/2024 (Department's Appeal)**  
**C.O.No.205/Mum/2024 (Assessee's Cross Objection)**

9. We would first take up the grounds raised by the Revenue in its appeal along with Cross Objections raised by the Assessee.
10. The appeal preferred by the Revenue is delayed by five days, while there is delay of 2 days in filing Cross Objection. With the consent of both the sides, the delay in filing appeal/cross objection is condoned.

**Ground No.1 and 2 of Department's Appeal**

11. Ground No.1 and 2 raised by the Revenue pertain to the directions issued by the CIT(A) to the Assessing Officer in relation to claim of deduction under Section 80IA of the Act.
12. On perusal of record, we find that the Assessee had filed return of income declaring taxable income of INR.6,89,82,370/- after claiming deduction of INR.1,57,73,420/- under Chapter VIA (Section 80IA) of the Act. The Assessee had an undertaking which was engaged in generation of power at Jaisalmer, Rajasthan which was set up during the Assessment Year 2010-2011 and the Assessee had been claiming deduction under Section 80IA of the Act in respect of the same from the Assessment Years 2014-2015 to 2017-2018 (which had been allowed to the Assessee). In the return of income for the Assessment Year 2018-2019, the Assessee had claimed deduction of INR.1,57,73,420/- in respect of the aforesaid undertaking. While processing the income tax return under Section 143(1) of the Act, the deduction claimed by the Assessee was disallowed.

13. The Assessee did not prefer an appeal against intimation issued under Section 143(1) of the Act and opted to raise issue in appeal preferred against the Assessment Order, dated 06/04/2021, passed under Section 143(3) of the Act.
14. Before the CIT(A) it was contended on behalf of the Assessee that the Assessee is a listed company engaged in the business of dealing in shares and securities; real estate and power generation, and that the Assessee had earned following profits/losses from the same - (a) net profits of INR.1,57,73,420/- from power generation business, (b) net profits of INR.23,40,65,869/- from real estate business and (c) loss of INR.25,61,65,372/- from the business of dealing in shares and securities. Thus, the Assessee had suffered net loss of INR.63,26,083/- under the head 'Profits & Gains of Business & Profession' for the relevant previous year. After setting off the aforesaid loss with Net Capital Gains of INR.9,10,81,871/-, the Assessee had Gross Total Income of INR.8,47,55,788/-. The Assessee claimed deduction of INR.1,57,73,420/- under Section 80IA falling in Chapter VIA of the Act from the aforesaid Gross Total Income and offered to tax taxable income of INR.6,89,82,370/-. It was contended on behalf of the Assessee that the deduction claimed by the Assessee was in compliance with the provisions contained in Section 80IA of the Act. As per Section 80IA(5) of the Act the quantum of deduction is to be computed taking the undertaking as the only source of income. The quantum so arrived in to be claimed as deduction from the Gross Total Income. Taking the undertaking as the only source of income the quantum of deduction was determined at INR.1,57,73,420/- which has been claimed by the Assessee as deduction from Gross Total Income of INR.6,89,82,370/- in terms of Section 80IA of the Act. Therefore, the deduction as claimed by the Assessee under Section 80IA of the Act in the return of income should have been allowed.
15. The above submissions found favour with the CIT(A) who directed the

Assessing Officer to allow deduction under Section 80IA of the Act after examining the same from the income tax records.

16. Being aggrieved, by the aforesaid directions given by the CIT(A) the revenue has preferred the present appeal before the Tribunal.
17. The first contention raised on behalf of the Revenue is that the CIT(A) erred in entertaining the grounds raised by the Assessee challenging the rejection of claim of deduction while processing return of income under Section 143(1) of the Act, in an appeal preferred against the Assessment Order passed under Section 143(3) of the Act. It was submitted that it was admitted position was that the deduction claimed by the Assessee under Section 80IA of the Act was denied by way of intimation issued under Section 143(1) of the Act which was a separate appealable order. The second contention raised by the Revenue is that the CIT(A) had failed to appreciate that the deduction claimed by the Assessee under Section 80IA of the Act could not have been allowed since the Assessee had suffered a loss under the head 'Profits & Gains of Business or Profession' during the relevant previous year. Reliance in this regard, was placed by the Learned Departmental Representative on the judgment of Hon'ble Supreme Court in the case of Synco Industries Ltd. Vs. Assessing Officer, Income-tax, Mumbai [2008] 299 ITR 444(SC), dated 13/02/2008.

Further, it was submitted by the Learned Departmental Representative, on a without prejudice basis, that since the computation under the head 'Profits & Gains of Business or Profession' had resulted into a loss, it cannot be said that the income of eligible undertaking was included in the Gross Total Income of the Assessee. Therefore, deduction as claimed by the Assessee under Section 80IA(1) of the Act could not have been allowed.

18. Per contra, the Learned Authorized Representative for the Assessee

submitted that while completing assessment under Section 143(3) of the Act the Assessing Officer had determined the income after disallowing deduction claimed under Section 80IA of the Act. Therefore, the order passed under Section 143(1) of the Act stood merged with Assessment Order passed under Section 143(3) of the Act. Thus, the Assessee was justified in raising the ground in appeal preferred against the order passed under Section 143(3) of the Act. The Learned Authorized Representative for the Assessee contended that the adjustment regarding deduction claimed by the Assessee under Section 80IA of the Act was beyond the scope of Section 143(1) of the Act and that the issuance of intimation under Section 143(1) of the Act on 06/02/2020 after the issuance of notice under Section 143(2) of the Act on 22/02/2019 was bad in law. In any case, no prejudice has been caused to the Revenue, since the CIT(A) has directed the Assessing Officer to verify the deduction claimed under Section 80IA of the Act and allow the same after examination.

As regards claim of deduction under Section 80IA of the Act on merits was concerned, the Learned Authorized Representative for the Assessee submitted that the deduction claimed by the Assessee was as per the provisions contained in the said section. The Assessee had positive gross total income which was arrived at after taking into consideration the income of the eligible undertaking. Since the income of the eligible undertaking form part of positive gross total income, deduction was claimed by the Assessee under Section 80IA of the Act for the amount determined as per Section 80IA(5) of the Act. Reliance in this regard was placed by the Learned Authorised Representative for the Assessee on the judgement of Supreme Court in the case of Commissioner of Income Tax Vs. Reliance Energy Ltd. [2022] 441 ITR 346 (SC). It was submitted that the Hon'ble Supreme Court had, after taking into consideration the judgment relied upon by the Learned Departmental Representative, held that there was no



provision in claiming deduction under Section 80IA of the Act from heads of income other than 'Profits & Gains of Business or Profession' as the deduction is to be granted from the Gross Total Income. As regards contention raised by the Revenue to the effect that no profits of the undertaking were included in the Gross Total Income of the Assessee, it was submitted that the approach adopted by the Revenue was misconceived as the Assessee had earned net profits from the eligible business which was set off against losses suffered from the other businesses during the relevant previous year as per the provisions of the Act and therefore, it cannot be said that the Gross Total Income did not include income earned by the undertaking.

19. We have given thoughtful consideration to the rival submissions.
20. On perusal of the Assessment Order, we find that the Assessing Officer has computed Gross Total Income under the normal provisions of the Act at INR.9,47,60,542/- as against Gross Total Income of INR.8,47,55,788/- computed by the Assessee. The difference of INR.1,00,04,754/- was on account of (a) denial of set off of brought forward Long Term Capital Loss of INR.16,08,703/- pertaining to Assessment Year 2014-2015 and (b) disallowance of INR.83,93,835/- made under Section 14A of the Act. There is no discussion in the body of the Assessment Order regarding the disallowance of deduction claimed by the Assessee under Section 80IA of the Act. However, in Computation Sheet, the Gross Total Income of the Assessee was computed at INR.9,31,51,839/- after allowing set off of the brought forward Long Term Capital Loss of INR.16,08,703/- from the Gross Total Income of INR.9,47,60,542/- computed in the body of the Assessment Order. Further, total deduction under Chapter VIA were computed at 'Nil' to arrive at taxable income of INR.9,31,51,839/-. Neither the Assessment Order nor the Computation Sheet attribute the denial of deduction claimed under Section 80IA of the Act to the variation made while processing returned of income under Section

143(1) of the Act. The starting point for computation of income is not the income determined as per Intimation Order dated, 06/02/2020 issued under Section 143(1) of the Act. Accordingly, we reject the contention of the Revenue that the ground raised by the Assessee challenging the denial of deduction under Section 80IA of the Act does not arise from the order passed under Section 143(3) of the Act. The natural corollary being that the defense available to the Assessee regarding limited scope of adjustment under Section 143(1) of the Act would not be available to the Assessee and as a result, the Assessee would not be able to contend that the addition/disallowance made is beyond the scope of Section 143(1) of the Act.

21. In case, for the sake of arguments, if the contention of the Revenue *(that the disallowance made under Section 80IA of the Act does not arise from the order passed under Section 143(3) of the Act)* is accepted, then the Computation Sheet would run contrary to the Assessment Order as the Assessing Officer has neither made a reference to variations made while processing return under Section 143(1) of the Act nor has the Assessing Officer made specific disallowance under Section 80IA of the Act anywhere in the Assessment Order. In that case, on this count alone, the Assessee would get to succeed at the threshold itself. Till the time the regular assessment proceedings were pending the possibility of the issue being taken up for scrutiny could not have been ruled out. It is not the case of the Revenue that the Assessee was not entitled to avail appellate remedy in respect of the issue raised. The only technical objection raised by the Revenue is that the Assessee should have filed separate appeal against the Intimation Order issued under Section 143(1) of the Act. In our view, in the facts of the present case this would have merely resulted in mere multiplicity of proceedings. Be that as it may, as we have already rejected the contention of the Revenue that the ground raised by the Assessee challenging denial of

deduction under Section 80IA of the Act does not arise from the Assessment Order under Section 143(3) of the Act, we proceed to examine the contentions raised by both the sides on merits.

22. During the course of hearing the Learned Departmental Representative had placed reliance upon the judgment of Hon'ble Supreme Court in the case of **Synco Industries Ltd. vs. Assessing Officer, Income-tax, Mumbai [2008] 299 ITR 444 (SC)**. We find that in the said judgement it was held as under:

- "11. *The above discussion makes it very evident that pre-dominant majority of the High Courts have taken the view that while working out gross total income of the assessee the losses suffered have to be adjusted and if the gross total income of the assessee is 'nil' the assessee will not be entitled to deduction under Chapter VI-A of the Act. It is well settled that where the pre-dominant majority of the High Courts have taken certain view on the interpretation of certain provisions, the Supreme Court would lean in favour of the pre-dominant view. Therefore, this Court is of the opinion that the High Court was justified in holding that gross total income must be determined, by setting off against the income, the business losses of earlier years, before allowing deduction under Chapter VI-A and if the resultant income is 'nil', then the assessee cannot claim deduction under Chapter VI-A.*
12. *The contention that under section 80-I (6) the profits derived from one industrial undertaking cannot be set off against loss suffered from another and the profit is required to be computed as if profit-making industrial undertaking was the only source of income, has no merits. Section 80-I(1) lays down that where the gross total income of the assessee includes any profits derived from the priority undertaking/unit/division, then in computing the total income of the assessee, a deduction from such profits of an amount equal to 20 per cent has to be made. Section 80-I(1) lays down the broad parameters indicating circumstances under which an assessee would be entitled to claim deduction. On the other hand, section 80-I(6) deals with determination of the quantum of deduction. Section 80-I (6) lays down the manner in which the quantum of deduction has to be worked out. After such computation of the quantum of deduction, one has to go back to section 80-I(1) which categorically states that where the gross total income includes any profits and gains derived from an industrial undertaking to which section 80-I applies then there shall be a deduction from such profits and gains of an amount*

*equal to 20 per cent. The words "includes any profits" used by the Legislature in section 80-I(1) are very important which indicate that the gross total income of an assessee shall include profits from a priority undertaking. While computing the quantum of deduction under section 80-I(6) the Assessing Officer, no doubt, has to treat the profits derived from an industrial undertaking as the only source of income in order to arrive at the deduction under Chapter VI-A. However, this Court finds that the non-obstante clause appearing in section 80-I(6) of the Act, is applicable only to the quantum of deduction, whereas, the gross total income under section 80B(5) which is also referred to in section 80-I(1) is required to be computed in the manner provided under the Act which presupposes that the gross total income shall be arrived at after adjusting the losses of the other division against the profits derived from an industrial undertaking. If the interpretation as suggested by the appellant is accepted it would almost render the provisions of section 80A(2) of the Act nugatory and therefore the interpretation canvassed on behalf of the appellant cannot be accepted. It is true that under section 80-I(6) for the purpose of calculating the deduction, the loss sustained in one of the units, cannot be taken into account because sub-section (6) contemplates that only the profits shall be taken into account as if it was the only source of income. However, section 80A(2) and section 80B (5) are declaratory in nature. They apply to all the sections falling in Chapter VI-A. They impose a ceiling on the total amount of deduction and therefore the non-obstante clause in section 80-I(6) cannot restrict the operation of sections 80A(2) and 80B(5) which operate in different spheres. As observed earlier section 80-I(6) deals with actual computation of deduction whereas section 80-I(1) deals with the treatment to be given to such deductions in order to arrive at the total income of the assessee and therefore while interpreting section 80-I(1), which also refers to gross total income one has to read the expression 'gross total income' as defined in section 80B(5). Therefore, this Court is of the opinion that the High Court was justified in holding that the loss from the oil division was required to be adjusted before determining the gross total income and as the gross total income was 'nil' the assessee was not entitled to claim deduction under Chapter VI-A which includes section 80-I also." (Emphasis Supplied)*

23. It is evident that the Hon'ble Supreme Court has held that if the Gross Total Income of an assessee is 'Nil', then such assessee would not be entitled to deduction under Chapter VIA of the Act. In the present case it is admitted position that the Assessee has earned profits from

the eligible undertaking. It is also admitted position that for the relevant assessment year Assessee had positive Gross Total Income. Therefore, in our considered view, the above judgment would not apply to the facts of the present case.

24. On the other hand, we find that the Learned Authorized Representative for the Assessee had placed reliance upon the judgment of Hon'ble Supreme Court in the case of **Commissioner of Income Tax Vs. Reliance Energy Ltd. [2022] 441 ITR 346 (SC)**. In that case it was held by the Hon'ble Supreme Court that deduction under Section 80IA of the Act is to be allowed from the Gross Total Income (as opposed to business income). While rejecting the contention of the Revenue that deduction under Section 80IA is to be allowed to the extent to business income only, the Hon'ble Supreme Court, after taking into consideration the above judgement in the case of Synco Industries Ltd. (Supra), held as under:

"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 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 22-9-1980 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.*

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*(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. (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.” (Emphasis Supplied)*

25. In view of the above, we accept the contention of the Assessee that deduction under Section 80IA of the Act is to be allowed from the Gross Total Income and the same cannot be restricted to income computed under the head 'Profits & Gains of Business or Profession'. Further, the scope of Section 80IA(5) of the Act is restricted to the determination of quantum of deduction by treating the eligible business as the only source of income.
26. We also reject the contention of the Revenue that in the present case the income of the eligible undertaking does not form part of Gross Total Income for the simple reason in case the profits from the eligible business are excluded from the computation of Gross Total Income, the loss under the head Profits & Gains of Business or Profession would be wider and the same shall stand increased by the amount of profits of the eligible undertaking. As a result, the Gross Total Income shall stand reduced by the said amount on account of set off of such increased losses from Profits & Gains of Business or Profession with the Capital Gains.
27. Further, as pointed by the Learned Authorized Representative for the Assessee during the course of hearing, the CIT(A) has directed the Assessing Officer to allow deduction under Section 80IA of the Act after verification of the claim.
28. Therefore, in view of the above we hold that, given the facts and circumstances of the present case and the settled legal position, the directions issued by the CIT(A) do not call for any interference. Accordingly Ground No.1 and 2 raised by the Revenue are dismissed.

**Ground No.3 & 4 of Department's Appeal**  
**Cross Objections 1&2 raised by the Assessee**

29. By way of Ground No.3 & 4, the Revenue has challenged the relief granted by the CIT(A) in respect of disallowance made by the Assessing Officer under Section 14A of the Act read with Rule 8D(2)(ii) of the IT Rules.
30. The relevant facts in brief that the Assessee had made suo-moto disallowance of INR.46,67,450/- under Section 14A read with Rule 8D of the Act by taking into consideration the investment which had yielded exempt income during the relevant previous year. The Assessing Officer made an additional disallowance of INR.83,93,835/- under Section 14A read with Rule 8D of the IT Rules. Thus, the Assessing Officer increased the taxable income determined under normal provisions as well as Book Profits computed under Section 115JB of the Act. This was challenged by the Assessee in appeal before the CIT(A). The CIT(A) disposed off the relevant ground raised by the Assessee in the following manner:

"6.1 *The appellant in its Ground of Appeal No. 1 assailed the AO in making addition of Rs. 8393835/- u/s 14A r.w.r 8D of the Rules. The AO in Para 3 of the assessment order noted that the assessee had disallowed Rs. 4067450/- under Section 14A r.w.r 8D of the Rules. The AO further in the assessment order noted that the assessee had earned exempt income of Rs. 246529206, And as such the disallowance is not in correct proportion as provided u/s 14A r.w.r. 8D of the Rules and proceeded to compute the disallowance at Rs 8393835/- The appellant in its submission stated that certain investments had been made into mainly growth option mutual funds which does not carry any dividend/ exempt income. The appellant further submitted that no disallowance is warranted in case of investment in subsidiary companies as strategic investment. Further the appellant also stated that no 14A disallowance is warranted u/s 115JB of the Act. The appellant relied on Vireet Investment.*

6.2.1 *The submission of the appellant is examined and the case laws are perused. The appellant on its own had made a Suo-moto disallowance of Rs. 4667450/- u/s 14A r.w.r. 8D of the Rules. The Hon'ble ITAT Mumbai in 102 taxmann.com 98 in case of Olive Bar*

*& Kitchen Pvt. Ltd held that where assessee had made Suo-moto disallowance of expenses under section 14A read with rule 8D, and where the Assessing Officer made further disallowance impugned further disallowance not sustainable. Further, the Hon'ble ITAT Mumbai in case of Asian Paints Ltd. in 160 taxmann.com 402 held that disallowance made by Assessing Officer under section 14A read with rule 8D without recording any satisfaction regarding claim of assessee in respect of expenditure incurred in relation to exempt income cannot be sustained. The Hon'ble High Court of Delhi in Cargo Motors (P) Ltd. in 145 taxmann.com 641 held that for purpose of making disallowance of expenses under section 14A as per rule 8D, only those investments were to be considered for computing average value of investments which yielded exempt income during relevant year. After considering the submission and the case laws the addition on account of disallowance u/s 14A r.w.r 8D of the Rules is deleted. Further with regard to the extension of the disallowance u/s 14A to the computation u/s 115JB of the Act. Following the case of Moon Star Securities Trading & Finance Co. (P.) Ltd in 161 taxmann.com 158 (Delhi High Court) the disallowance made under section 14A could not be considered while computing MAT under section 115JB, the ground raised by the appellant is also allowed. The Ground of Appeal No. 1 is allowed."*

31. Thus, the CIT(A) overturn the decision of the Assessing Officer and deleted the addition made under Section 14A of the Act while computing taxable income under normal provisions of the Act as well as while computing Book Profit for the purpose of Section 115JB of the Act.
32. Being aggrieved, the revenue has challenged the action of CIT(A) by way of Ground No.3 and 4 raised in the present appeal while the Assessee has filed Cross-Objection No. 1& 2 supporting the decision of CIT(A).
33. We have considered the rival submission and have perused the material on record.
34. While computing disallowance under Section 14A read with Rule 8D of the IT Rules the Assessee had excluded the investments made in (a) GCIL Finance Limited (b) Geecee Business Private Limited (c) Geecee Niramaan LLP and (d) Growth Option Mutual Funds. It is the stand of

the Assessee that the Assessee had not earned any exempt income on the aforesaid investments during the relevant previous year. Per contra, the stand taken by the Revenue is that all the investments should have been taken into consideration by the Assessee while determining quantum of disallowance in terms of Section 14A read with Rule 8D of the IT Rules.

35. We are of the considered view that the approach adopted by the Assessee is in line with the decision of the Special Bench of the Tribunal in the case of **Assistant Commissioner of Income Tax Vs. Vireet Investment Pvt. Ltd. : [2017] 165 ITD 27 (Delhi –Trib) (SB)** wherein it was held that only investments yielding exempt income during the relevant previous year shall be taken into consideration for the purpose of computing the average value of investment for the purpose of Rule 8D of the IT Rules. Therefore, the action of the CIT(A) deleting the additional disallowance made by the Assessing Officer under Section 14A read with Rule 8D while computing taxable income under normal provision of the Act and while computing 'Book Profits' for the purpose of Section 115JB of the Act does not call for any interference.
36. During the course of hearing it was contended on behalf of the Revenue that the CIT(A) had granted relief to the Assessee without appreciating the fact that the amendments made to Section 14A of the Act by way of Finance Act 2022 were clarificatory in nature and therefore, all investments whether resulting in exempt income or not should have been taken into consideration while determining opening/closing balance of investment. We find that the issue under consideration is no longer res integra. We note that Hon'ble Delhi High Court has, in the case of **Principal Commissioner of Income-tax (Central) vs. Era Infrastructure (India) Ltd. [2022] 288 Taxman 384 (Delhi)/[2022] 448 ITR 674 (Delhi)[20-07-2022]**

has rejected the contention of the Revenue that amendments to Section 14A introduced by the Finance Act 2022 shall have retrospective effect. Identical view has been taken in by the Mumbai Bench of the Tribunal in the case of Assistant Commissioner of Income Tax- Circle 3(1)(1) Vs Bajaj Capital Ventures (P.) Ltd.: [2022] 140 taxmann.com 1 (Mumbai - Trib.)[29-06-2022].

37. In view of the above, Ground No.3 and 4 raised by the Revenue are dismissed while the Cross-Objection No. 1 & 2 raised by the Assessee are allowed.
38. In result, the appeal preferred by the Revenue is dismissed while the Cross Objections preferred by the Assessee are allowed.

**ITA No.3975/Mum/2024 (Assessee's Appeal)**

39. Now we would take up the appeal by the Assessee for the Assessment Year 2018-2019.
40. The solitary ground raised by the Assessee in its appeal pertains to denial of credit of Dividend Distribution Tax paid and the consequential levy of interest and raising of demand.
41. During the course of hearing, the Assessee invited our attention to the following two Challans, each dated 07/11/2017, showing payment of Dividend Distribution Tax for the Assessment Year 2018-2019 placed at Page 113 and 114 of the Paper Book:

	<u>BSR Code</u>	<u>Challan No.</u>	<u>Amount(INR)</u>
(a)	0011352	25111	46,14,400/-
(b)	0004329	54990	20,20,121/-

42. On perusal of record we find that the credit of Challan No.25111 showing deposit of Dividend Distribution Tax of INR.46,14,400/- was not granted to the Assessee by the Assessing Officer. In appeal

preferred by the Assessee the CIT(A) failed to appreciate the correct facts and rejected the ground raised by incorrectly placing reliance upon the decision of Special Bench of the Tribunal in the case of Deputy Commissioner of Income Tax Vs. Total Energies Marketing India (P.) Ltd. 156 taxmann.com 307. In the present case, the Assessee was not claiming the benefit of low tax rate prescribed under the Double Taxation Avoidance Agreement and was merely claiming the credit of Dividend Distribution Taxes paid. Keeping in view the facts and circumstances of the present case we direct the Assessing Officer to grant credit of Dividend Distribution Tax of INR.46,14,400/- after verification of Challan, and Form 26AS. The Assessing Officer is directed to re-compute the applicable interest/demand, if any, accordingly. In terms of the aforesaid Ground No.1 raised by the Assessee in the appeal is allowed for statistical purposes.

43. In result, appeal preferred by the Assessee is allowed for statistical purposes.
44. In conclusion the appeal preferred by the Revenue is dismissed while the appeal preferred by the Assessee and the Cross Objections preferred by the Assessee in Revenue's appeal are allowed.

Order pronounced on 30.05.2025.

*Sd/-*  
**(Vikram Singh Yadav)**  
**Accountant Member**

*Sd/-*  
**(Rahul Chaudhary)**  
**Judicial Member**

मुंबई Mumbai; दिनांक Dated : 30.05.2025  
Milan, LDC

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त/ The CIT
4. प्रधान आयकर आयुक्त/ Pr.CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT,  
Mumbai
6. गार्डफाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापितप्रति //True Copy//

उप/सहायकपंजीकार /(Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai