IN THE INCOME TAX APPELLATE TRIBUNAL, 'H' BENCH MUMBAI

BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
MS.PADMAVATHY S, ACCOUNTANT MEMBER

ITA No.509/Mum/2023
(**Assessment Year :2019-20**)

M/s. Tata Steel Ltd. Bombay House 24, Homi Mody Street Fort, Mumbai-400 001	Vs.	The Deputy Commissioner of Income Tax-2(3)(1) Room No.552, Aayakar Bhavan, Maharshi Karve Road Mumbai-400 020
PAN/GIR No.AAACT2803M		
(Appellant)	..	**(Respondent)**

Assessee by	Shri Nishant Thakkar
Revenue by	Shri Pravin Salunkhe
Date of Hearing	**19/10/2023**
Date of Pronouncement	**07/11/2023**

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against final assessment order dated 19/01/2023, passed by AO in pursuance of directions given by DRP u/s.144(5) dated 30/12/2022 for the A.Y.2019-20.

2. In various grounds of appeal assessee has raised following issues-

(i) **(Ground 2 to 2.8)** - Transfer pricing adjustment of Rs.99,61,45,650/- with respect to transaction of sale of power from eligible unit (eligible for deduction u/s.80IA to non-eligible unit of the assessee.).

(ii) **(Ground No.3-3.11) –** Disallowance of interest paid on perpetual non-convertible debentures of Rs.266,12,54,846/-.

(iii) **(Ground No.4-4.4)-** Disallowance of expenditure incurred on compensatory afforestation of Rs.126,19,08,529/-.

(iv) **(Ground No.5-5.4)-** Disallowance of provision for leave encashment of Rs.151,18,79,819/-

(v) **(Ground No.6-6.3)-** Disallowance u/s.14A of the Act r.w.r.8D of Rs.7,09,74,178/-

(vi) **(Ground No.7-7.2)-** Addition of disallowance u/s.14A of the Act to book profits u/s.115JB of the Act of Rs.7,09,74,178/-

(vii) **(Ground No.8-8.3)-** Claim of deduction of interest on PNCD amounting to Rs.266,12,54,846/- in computing book profit u/s.115JB of the Act not granted.

(viii) **(Ground No.9-9.2)-** Disallowance of interest on PNCD amounting to Rs.266,12,54,846/- in computing book profit u/s.115JB of the Act.

(ix) **(Ground No.10-10.1)-** AO has not correctly computed book profit u/s.115JB

(x) **(Ground No.11-11.1)-** AO has not given grant of available MAT credit

(xi) **(Ground No.12-12.1)-** Lastly, AO has erred in not considering the interest u/s.244A correctly.

3. The assessee is a company engaged in the business of manufacturing of Iron and steel, bearings, Ferro alloys and sale of power and water. In so far as the transfer pricing adjustment of Specified Domestic Transactions made u/s.80(A(8), the facts are that assessee has three captive power plants on which claim of deduction u/s.80IA has been made namely-

(a) Kalinga Nagar Power undertaking-I, located in the State of Orissa

(b) Jamshedpur Power Undertaking-H, located in the State of Jharkhand

(c) Jamshedpur Power Undertaking-1, located in the State of Jharkhand.

The above 3 units have generated power during the year under consideration, as under:-

a Kalinga Nagar Power undertaking, I- 9,12,73,329 KWH

b. Jamshedpur Power Undertaking. H-10,44,54,865 KWH

c. Jamshedpur Power Undertaking I-8,89,89,942 KWH

4. The power generated by the above units has been sold to the non-801A units of the assessee were as under:-

a. Kalinga Nagar Power undertaking. I (Orissa) - sold all power generated to Kalinganagar manufacturing unit.

b. Jamshedpur Power Undertaking- H(Jharkhand) - sold all power generated to Jamshedpur manufacturing unit.

c. Jamshedpur Power Undertaking. I (Jharkhand) sold all power generated to Jamshedpur manufacturing unit

5. The aforesaid non-eligible manufacturing units of the assessee, in addition to the above have also purchased power from third-party power distributions companies (DISCOMS) as under:-

a Kalinga Nagar Power Undertaking I (Orissa) - has purchased power from North-eastern Electricity Supply Company of Odisha Ltd (NESCO) at rate prescribed by Orissa Electricity Regulatory Commission (OERC) at Rs.7.64 per KWH

b. Jamshedpur Power Undertaking H (Jharkhand) - has purchased power from Jamshedpur Utility Services Company Limited (JUSCO) at rate prescribed by Jharkhand State Electricity Regulatory Commission (JSERC) at Rs.8.46 per KWH

c. Jamshedpur Power Undertaking. I (Jharkhand) - has purchased power from JUSCO at rate prescribed by JSERC at Rs.8.46 per KWH

6. Since the said non-eligible units were purchasing power from the DISCOMS NESCO and JBVNL (Discom company of Jharkhand), the price at which NESCO and JBVNL sold the power came to be the market value of the electricity in the respective State. Accordingly, the assessee considered the price at which the CPPs sold power to the non-eligible unit as under:-

Undertaking	**Electricity units generated & sold to non-eligible unit manufacturing unit (KWH)**	**Rate at which power sold to non-eligible unit**
Kalinga Nagar Power Undertaking-I	9,12,73,329	7.64
Jamshedpur Power Undertaking – H	10,44,54,865	8.46
Jamshedpur Power Undertaking - I	8,89,89,942	8.46

7. The ld. TPO to whom the matter was referred to determine the price of sale of power to eligible unit & non-eligible unit, held that the Distribution Companies, (DISCOMs), viz. NESCO and JBVNL in the present case, cannot be regarded as functionally comparable to the Captive Power Plants and therefore, the price at which the State Electricity Distribution Companies sold power cannot be taken as comparable. The TPO however, proceeded to hold that the price at which DISCOMs, viz. NESCO and JBVNL, purchased power at the price determined by the relevant state's electricity regulatory commission as increased by certain other costs incurred by the DISCOMS to be the market value. In working out the costs to be added to the cost of power purchased, the TPO reduced the employee cost to 20% of that incurred by the DISCOMs, denied inclusion of provision for doubtful debts, and denied inclusion of transmission cost. He therefore, computed the price at which the CPPs sold power as under

a. For Kalinga Nagar Power undertaking. I (Orissa) - Based on adjusted cost of power supplied by NESCO, at Rs 4.25

b. For Jamshedpur Power Undertaking, H(Jharkhand) - Based on adjusted cost of power supplied by JBVNL, at Rs.4.91

c. For Jamshedpur Power Undertaking. I(Jharkhand) - Based on adjusted cost of power supplied by JBVNL, at Rs.4.91.

8. The case of the ld. TPO was that once the transfer of goods and services referred to in sub-section (8) of section 80IA has been brought under the scope of SDT u/s.92BA therefore, the same principles have to be applied for determining the arm's length price as provided u/s.92F r.w.r.10B(2). According to him where the claim of deduction u/s.80IA is made, arm's length price for the purpose of such SDT is the price which would be applicable in the transactions between two persons other than AE in uncontrolled conditions. The assessee has transferred its whole power from its capital eligible units to other non-eligible units without any much distribution cost and on the other hand assessee has chosen comparables of distribution companies having high distribution cost and transmission losses which are affected by such DISCOMs in the sale price set up by them for the retail customers. Thus, adopting price charged by power distribution company to end customer by DISCOM of Orissa and Jharkhand is incorrect because, margin earned by the power distributor companies in so far as functions performed, assets employed and risk assumed by it are embedded in the said price whereas, assessee has not performed any such substantial function on account of power distribution. Thereafter, he

proceeded to analyse the functions of the companies as distribution companies. He also analysed various factors which affects the pricing of the distribution company and also analyse various cost elements. He has also referred to Safe harbor rules as noted by CBDT wherein, it has been provided that in case of the company engaged in business of determination of power rates for supply of electricity would be as per the tariff decided by appropriate commission in accordance with the provisions of Electricity Act, 2003. He also proceeded to do his benchmarking after rejecting the analysis done by the assessee and held that the best alternative would be the price of the power charged by the power generating undertaking as they are functionally similar to captive unit of the assessee which is manufacturing power i.e. the rate at which power generating undertaking companies sell to the grid as an applicable CUP tariff rate for recommendation of revenue of eligible units of M/s. Tata Steel Ltd.

9. TPO further observed that considering the facts and circumstances, the difference between the captive power plants and DISCOMs and the consequent effect on the pricing of the power, the composite nature of the power unit as described by the assessee catering to specific need can be kept to certain extent but with suitable modifications. Thereafter, he has incorporated the power of cost as submitted by the assessee for various units as discussed by him in detail in the impugned order and made determined ALP per unit at Rs.4.91/- for Jamshedpur location and Rs.4.25/- for Kalinga Nagar.

10. The ld. DRP agreed with the ld. AO / TPO that DISCOM cannot be compared to captive power units and therefore, purchase price of electricity is adjusted by certain costs of DISCOM had to be considered as ALP.

11. Before us ld. Counsel has made elaborate submissions which in sum and substance can be summarized as under:-

a. It was submitted that Section 80IA (8) of the Act prescribes 2 alternatives for determination of "market value" – firstly, the price at which such goods would ordinarily fetch in the open market and secondly, ALP as determined under the Chapter X of the Act.

b. If the revenue's contention is to be accepted then it would render first option redundant.

c. In the present case, the non-eligible manufacturing units of the appellant have admittedly and indeed purchased electricity from third-party DISCOMs, viz. NESCO and JBVNL at Rs. 7.64/KWH and Rs. 8.46/KWH which is in addition to the electricity purchased from the CPPs. Therefore, the price at which electricity is available in the open market is not only readily available but has been paid by the appellant's very non-eligible manufacturing units which have purchased power from the CPPS. Thus it was submitted that there could not be a more direct instance of the market value of the electricity sold by the CPPS.

d. Heavy reliance was placed on the decision of the coordinate bench in the appellant's group companies case of **Tata**

Chemicals Limited versus DCIT [ITA No.468/MUM/2022] wherein it has been held as under:

> *"In our opinion it will be too myopic view to give an interpretation that all the transaction covered u/s 801A (8) has to be compulsorily determined under transfer pricing provision, cannot be accepted Because the statute has clearly provided two options or two manners in which market value of the goods and services can be determined. The phrase "or" does not give mean that the second mechanism provided in clause (ii) of Explanation alone can be applied after introduction of SDT from 01.04.2013 The use of the word "or" can be interpreted as firstly, both manner are available with the assessee to demonstrate that market value of the goods and services has to be either by showing that the price of such goods and services is in consonance with the price available in the open market; or if assessee is not able to establish the price available in the open market, then the price of goods and services has to be established through arm's length principle. Secondly, if the price of the transfer of goods and services is in consonance with the price available in the open market then the profits of the eligible business shown as per this price is eligible for deduction and in that case the second option may not be necessary."*

Apart from that, ld. Counsel has drew our attention to the similarity of facts between the case of M/s. Tata Chemicals Ltd (supra) and that of the assessee and submitted that exactly

similar facts are permeating in the case of the assessee. The TP adjustment made by the ld. AO is to be deleted.

12. On the other hand, ld. DR had given his counter submissions / arguments and also with respect to our various queries raised by the Tribunal which for the sake of ready reference is reproduced hereunder:-

"2.It is humbly submitted that the crux of the issue in the instant appeal is with respect to the MAM applied to arrive at ALP of power supplied by eligible unit to non-eligible unit. During the hearing on 19.10 2023 before the Hon'ble Bench certain issues came out on which Hon'ble Bench sought written submission.

2.1 Firstly, Hon'ble Bench sought submission with respect to Tested Party selection Assessee has taken non-eligible unit as tested party and has compared the rate at which power is purchased from eligible unit with that of power purchased by non-eligible unit from third party Le, distribution companies. On the other hand AO/TPO, while rejecting the approach of assessee, has taken eligible unit as tested party and has compared selling price of power to non-eligible unit with that of selling price of power by other power generating companies.

2.2 TPO while rejecting the approach of assessee has given elaborate reasoning. The important issue for consideration here is what is being put to test here in the transaction. The eligible unit, u/s 80 IA, is availing tax holidays. In this regard it is important to consider relevant section.

Thus, what is mandated u/s 80 IA is computing the profits and gains of eligible business le profits and gains of eligible business/unit are put to test. Therefore, any analysis, for determination of market value/ALP, should be from the perspective of eligible business/unit. In other words, the price at which eligible unit can sell its product, should be point of focus and not the price at which non-eligible business buys it. Secondly,

if non-eligible is buying such product from distribution companies whose FAR is totally different than eligible unit then it totally vitiates the comparison. TPO has elaborately explained this reasoning in its order. Therefore, those points are not repeated here and reliance is placed on all these points in para 5.7 of TPO's order

2.3 Another issue which came up for discussion before Hon'ble Bench was with respect to meaning of market value in the Explanation to the said section. In this regard the Explanation to the said section is reproduced as under Explanation. - For the purposes of this sub-section, market value, in relation to any goods or services, means

(i) the price that such goods or services would ordinarily fetch in the open market; or

(ii) the arm's length price as defined in clause (i) of section 92F, where the transfer of such goods or services is a specified domestic transaction referred to in section 92BA.]

The contention of the appellant assessee was that first leg of the explanation is ought to be considered in the instant case. This contention of the appellant assessee is not acceptable. The second leg to the explanation was added by the Finance Act, 2012 w.e.f. 01.04.2013. It was done to give effect to Specified Domestic Transaction (SDT) provisions in Section 92CA, 92BA etc which were inserted by the Finance Act, 2012 w.e.f. 01.04.2013. Thus, second leg of explanation automatically and logically becomes applicable once the reference is made by AO to TPO u/s 92CA for determining ALP of a given Specified Domestic Transaction. Therefore, action of TPO of applying relevant provisions and Rules for determining ALP cannot be faulted with. Further, without prejudice to whatever stated in paras herein above, even if it is assumed that first leg of explanation applies in the instant case, the meaning of first leg, as drawn by assessee is that, the price that such goods or services would ordinarily fetch in open market' means the price at which the non-eligible unit is buying its power from open market. In this regard it is stated that this self serving meaning drawn by appellant assessee is total improper and out of place. The price that such goods or services would ordinarily fetch

in open market' necessarily means the price which the power producing company can get for its product, i.e. power, in open market. The logical meaning, as can be understood from plain reading of text in the context of whole basis of the Section, is as explained above. Therefore, it is humbly submitted that argument of the appellant assessee in this regard should not be accepted.

2.4 The TPO has rightly relied on second leg of explanation and determined ALP by comparing the price with price at which other power producing companies selling their power. In this regard one issue raised by Hon'ble Bench is that the price as adopted by TPO in its show cause is the tariff determined by Appropriate Commission. That the whole of power of power producing companies is purchased by one company and then it is distributed further Thus the purchaser being single Govt entity which has long term contract with power producing companies can influence the said price and therefore it is tainted transaction and cannot be taken as independent uncontrolled transaction.

2.5 In this regard it is submitted that the tariff determined by the Commission is not something arbitrary. The price is determined by considering all the prevalent factors. Tariff of Generation companies are either determined by the appropriate Commission under Section 62 of the Electricity Act, 2003 based on the nature of cost or adopted by the Commission based on levelized tariff discovered through competitive bidding process under Section 63 of the Act. Generation Tariff can be generally divided into two parts based on the nature of cost:

1. Fixed Cost: Return on Equity, Interest on Loan, Depreciation, Operation & Maintenance Charges, Interest on Working Capital etc.

II. Variable Cost Fuel Cost.

The tariff for Generation Companies is determined /adopted in two parts consisting of Fixed Charge (recovery for Fixed Cost) and Variable Charge (recovery for Variable Cost). Fixed charges and operational parameters of a generating station is approved by the appropriate commission for a Control Period and energy charge is based on the actual price of the fuel prevailing during the period of

bill on monthly basis for projects under Section 62 of the Act whereas the billing for the projects which have been adopted under section 63 is also in two parts based on the capacity charge, escalation factor etc. based on which levelized tariff is discovered.

Thus, tariff as determined by Commission is based on fair, transparent and scientific method which takes into account all the prevalent factor. Therefore, the tariff as determined by Odisha Electricity Regulatory Commission (OERC) and Jharkhand State Electricity Regulatory Commission (JSERC) essentially reflects the fair market value of power/electricity. And the TPO has rightly proposed to apply the same in its show cause.

Without prejudice to whatever stated herein above, even if it is assumed that the tariffs determined by respective Commissions are tainted, then the price charged by distribution companies in open market are based on these tainted tariffs only. Typically, distribution companies add their costs and margin on the purchase cost of power (Tariff as determined by respective Commissions) and resultantly the said tariffs are further increased. Therefore, the resultant price i.e. price charged by distribution companies in open market is further inflated which cannot be taken as benchmark for ALP determination of eligible power producing units.

2.6 Further, after considering the submission of assessee in response to the show cause, the TPO has gone further and has considered the distribution function in limited manner. The purchase cost of power by distribution companies is further increased by adding certain applicable costs. And the said resultant price is taken as ALP. Thus, TPO has already applied very liberal estimates of prices going beyond the fair tariff determined by respective Commission. Therefore, it is humbly submitted that the ALP determined by TPO and consequent adjustments made be confirmed.

2.7 The Hon'ble Bench also queried that if there is any other statistics/data showing open market price charged by power producing companies Or is there any other method to determine fair price of power produced by eligible unit. In this regard it is

observed that Ld TPO has given reference to price prevalent on various Energy Exchanges. However no exact statistics is given. With respect to any other method, it is submitted that alternatively possibility of using cost plus margin method can be explored for benchmarking. For this, all the cost centers for eligible unit to be identified and based on it the cost of output power to be determined and a reasonable margin can be applied on the same, which can be taken as ALP

3. In view of the above discussion, it is humbly submitted that the ALP determined by TPO be accepted and consequent adjustment be confirmed. Alternatively, without prejudice to above prayer, the matter may be restored to the file of AO/TPO for finding out ALP based on either any other statistics available or by using cost plus margin method as discussed in para 2.7 above or any other suitable method.

13. We have heard rival submissions and perused the relevant finding given in the impugned orders as well as material referred to before us. The entire controversy revolves around, *firstly*, whether sale of electricity by an eligible unit entitled for deduction u/s.80IA which has supplied power from its three captive power plants, can the market value be the price which is available for purchase in the open market by manufacturing units; *secondly*, can the price on which DISCOMS are supplying electricity in the open market and also purchased by the these non-eligible units on same price from these DISCOMS, is the fair market price for the purpose of section 80IA(8); and lastly, can the rate of supply of power by the DISCOMS can be held to comparable with the captive power plants unit of the assessee. The rate of electricity transferred by the three captive units to the assessee and the rate which ld. TPO has applied and corresponding adjustment are as under:-

Undertaking	Electricity unit transferred	Assessee's Rate per unit	AO/ TPO's Rate per unit	Adjustment
Kalinga Nagar Power undertaking - 1	9,12,73,329	7.64	4.25	30,94,16,585
Jamshedpur Power Undertaking - H	10,44,54,865	8.46	4.91	37,08,14,771
Jamshedpur Power Undertaking - I	8,89,89,942	8.46	4.91	37,08,14,771
Total adjustments				99,61,45,650

14. It is matter of record that non-eligible manufacturing units have not only purchased electricity from the aforesaid three captive power units but also purchased electricity from three DISCOM companies (supra). Thus, the case of the assessee was that this is the price available in the open market which has been paid by the assessee at the same rate on which it has procured power from its three captive power plants. Thus, this is a fair market rate of the electricity. This precise issue and the submissions which has been raised by the ld. DR and also the reasoning given by the ld. TPO has been dealt by this Co-ordinate Bench in the group cases of the assessee in the case of Tata Chemicals Ltd. vs. DCIT in ITA No.468/Mum/2022. Before

us a chart has been submitted to show the similarity between two cases in the following manner:-

		TATA Chemicals Ltd.	TATA Steels Ltd.
1	Goods transacted and transaction	Electricity produced by CPP sold to non- eligible unit of the Assessee.	Electricity produced by CPP sold to non-eligible` unit of the Assessee
2	Price considered by Assessee as market value for the purposes of electricity supplied by the CPP to the Assessee's non-eligible unit.	The price at which the non-eligible unit purchased electricity from the distribution company the DISCOM - viz., Gujarat. Electricity Board.	The price at which the non-eligible unit purchased electricity from the DISCOMs (NESCO and JUSCO)
3	Reasons for rejection of the price considered by the Assessee	Distribution companies cannot be compared to CPPs as they distribution companies have a different cost structure as compared to CPPS.	Distribution companies cannot be compared to CPPs as they distribution companies have a different cost structure as compared to CPPS
4	Price considered by the Revenue	The price at which the distribution company purchases power at rates stipulated/ determined by the state electricity regulatory commission. The Revenue authorities took the price at which Gujarat Electricity Board (DISCOM) purchased power from Torrent Power Ltd. (a power generating company).	The price at which the distribution company purchases power at rates stipulated / determined by the state electricity regulatory commission viz. NESCO and JBVNL (DISCOMS) purchase purchases power power, increased by certain costs incurred by the DISCOMS.

5	Controversy before the Hon'ble Tribunal	Whether the Assessee was right in taking the price at which the non-eligible unit purchased electricity from the distribution company the DISCOM - viz. Gujarat Electricity Board?	Whether the Assessee is right in taking the price at which the non-eligible unit purchased electricity from the DISCOMS (NESCO and JUSCO)?
6	Conclusion of the Hon'ble Tribunal	Explanation to section 801A(8) specifically provides for two options to arrive at the "market value" - (i) the price at which such goods would ordinarily fetch in the open market and (ii) ALP as determined under the Chapter X of the Act. Since the price at which the non-eligible The Revenue's argument that in case of SDT only the ALP under S. 92F [i.e. option (ii)] alone can be regarded as the market value is "myopic" and "cannot be accepted". (Para 14, Page 16)	The case of the assessee is that the same conclusion ought to be followed in the case of Tata Steel Ltd.

16. The relevant finding and the observations of the Tribunal reads as under:-

"11. The entire controversy germinates from the fact, as to whether the sale of electricity by eligible unit entitled for

deduction u/s.80IA which has supplied 5,23,42,000 KWH units of electricity to the manufacturing unit of TCL at Mithapur at transaction price of Rs. 36,09,44,480/- at the rate of Rs. 6.90/- per unit is at market value or not. In so far as determining market value in terms of Section 80 IA (8), the premise of the ld. TPO is that, firstly, it is a specific domestic transaction u/s.92BA and therefore, the market value of the electricity supply has to be determined in terms of transfer pricing provisions so as to determine the correct market value and the profits of eligible unit as per ALP within the scope and ambit of Section 80IA (8). Secondly, the ld. TPO has held that since the eligible unit is captive power generation unit and therefore, the price at which it has sold the electricity should be benchmarked with the comparables who are generating electricity and supplying it to the State Electricity Board which here in this case is GEB. Another point which has been raised by the ld. TPO is that, what is to be benchmarked is the profits of the eligible unit and therefore, eligible unit alone should be taken as a tested party and the FAR analysis has to be done of the eligible unit vis-à-vis the other units which are generating electricity. Lastly, he has given the detailed analysis as to why the price charged by the distribution companies cannot be compared with the assessee because it undertakes various functions, deploys various assets and assumes various risks and therefore, the price charged by the distribution company from the end customers cannot be the market value of the price on which assessee sold the price as power generation unit to another unit of the same assessee. Finally, the ld. DRP has given one comparable instance, of M/s. Torrent Power Ltd. (TPL) which was into generation of electricity in whose case, Gujarat Electricity Regulatory Commission (GERC) has determined the tariff for supply of electricity to State Electricity Board at Rs.3.99 per unit.

12. Whereas the case of the assessee is that the manufacturing unit has bought the electricity from the eligible unit at Rs.6.90 per unit which is the price from which it has procured electricity from GEB and therefore, the price charged by GEB is the market value of the transaction of sale of electricity. Section 80 IA provides that 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), then while computing the total

income of the assessee, a deduction of an amount equal to 100% of the profits and gains derived from such business for ten consecutive assessment years. However, sub-section (8) provides that where any goods or services held for the purposes of the eligible business are transferred to any other business carried on by the assessee, the consideration, if any, for such transfer of the eligible business does not correspond to the market value of such goods or services as on the date of the transfer, then, for the purposes of the deduction, the profits and gains of such eligible business shall be computed as if the transfer had been made at the market value of such goods or services. The relevant specimen reads as under:-

8) Where any goods for services held for the purposes of the eligible business are transferred to any other business carried on by the assessee, or where any goods or services|held for the purposes of any other business carried on by the assessee are transferred to the eligible business and, in either case, the consideration, if any, for such transfer as recorded in the accounts of the eligible business does not correspond to the "market value of such goods "or services as on the date of the transfer, then, for the purposes of the deduction under this section, the profits and gains of such eligible business shall be computed as if the transfer, in either case, had been made at the "market value of such goods "or services" as on that date:

***Provided** that where, in the opinion of the Assessing Officer, the computation of the profits and gains of the eligible business in the manner hereinbefore specified presents exceptional difficulties, the Assessing Officer may compute such profits and gains on such reasonable basis as he may deem fit.*

Explanation- For the purposes of this sub-section, "market value", in relation to any goods or services, means-

(i)the price that such goods or services would ordinarily fetch in the open market; or

(ii) the arm's length price as defined in clause (ii) of section 92F, where the transfer of such goods or services is a specified domestic transaction referred to in section 92BA.

13. Thus, the aforesaid provision provides that goods and services provided by the eligible business which is being transferred to other business carried on by the assessee has to correspond to the market value of such goods as on the date of the transfer. The Explanation provides the scope and the meaning of the 'market value' in relation to any goods and services which has provided two manners to determine. The first ***is the price that such goods or services would ordinarily fetch in the open market*** *and then the phrase* ***"or"*** *has been used. Secondly,* ***the arm's length price as defined in clause (ii) of section 92F, where the transfer of such goods or services is a specified domestic transaction referred to section 92BA.*** *Section 92BA incorporates the determination of ALP under transfer pricing provision of sections 92,92C, 92D and 92E. It provides that any transfer of goods or services referred to in sub-section (8) of Section 80IA is also covered under the specified domestic transaction. 92F sub-clause (ii) defines the arm's length price, which means the price which is applied or proposed to be applied in a transaction between the persons other than associated enterprises in uncontrolled conditions. Thus, the second option for determining the market value is the mechanism of transfer pricing provision for determining the arm's length price.*

14. The entire case of the department is that, since it is SDT in term of Section 80I (8), therefore, the market value has to be in accordance with the determination of arm's length price u/s.92C r.w.r. 10BA. In other words, once any transaction is hit by 80IA (8), then compulsorily, the market value has to be determined in accordance with the arm's length principle and not otherwise. If the TPO's contention and the opinion is accepted, then under all the transactions which are covered u/s.80IA(8) would compulsorily be determined as per transfer pricing provision as all the transactions falling u/s.80IA(8) will be specified domestic transactions only. If that is the only opinion which is to be upheld, then, ostensibly the entire exercise of ld. TPO is justified, that is, the whole process of determining, who is the tested party, what should be the FAR analysis of the tested party vis-à-vis the comparables under uncontrolled transactions and whether particularly in this case the price charged by the distribution entity can be said to be arm's length price or the comparable has to be from the entities which are

generating power, which here in this case one comparable has been chosen i.e. M/s. Torrent Power Ltd. (TPL). In our opinion it will be too myopic view to give an interpretation that all the transaction covered u/s. 80IA(8) has to be compulsorily determined under transfer pricing provision, cannot be accepted. Because, the statute has clearly provided two options or two manner in which market value of the goods and services can be determined. The phrase ***"or"*** *does not give mean that the second mechanism provided in clause (ii) of Explanation alone can be applied after introduction of SDT from 01.04.2013. The use of the word "or" can be interpreted as, firstly, both manner are available with the assessee to demonstrate that market value of the goods and services has to be either by showing that the price of such goods and services is in consonance with the price available in the open market; or if assessee is not able to establish the price available in the open market, then the price of goods and services has to be established through arm's length principle. Secondly, if the price of the transfer of goods and services is in consonance with the price available in the open market then the profits of the eligible business shown as per this price is eligible for deduction and in that case the second option may not be necessary.*

15. Both the authorities, i.e., ld. TPO and ld. DRP have held that in case of 80IA (8), the market value has to be compulsory governed by Explanation (ii) to Section 80IA (8), because in 92BA provides that such transfer of goods and services referred in this sub-section falls within SDT and therefore, arm's length price has to be determined as per Section 92F(ii). Further according to them Explanation (i) & (ii) have separate application because it is separated by word "or", but how they are separately applicable and under which circumstances has not been elaborated. If such an interpretation is to be accepted, then clause-(i) of the Explanation will become otios and redundant, because then the transfer of the goods and services falling u/s.80IA(8) has to be compulsorily be determined under arm's length principle. Had it been so, then post introduction of SDT in Section 92BA w.e.f. 01/04/2013, then statute would have provided that for the purpose of Sub-section (8) to Section 80IA, "market value" in relation to goods or services means the arm's length price as defined in clause (ii) of Section 92F. If both the clauses exist then one has to see if the market value is discernable from the price for such goods would ordinarily fetch in the open market unless such price is not

available, then there is an option for determining the market value as per the arm's length price.

16. Here in this case what is required to be seen is, whether the market value in the price charged by the eligible unit for the sale of electricity to another unit can be benchmarked with the price on which GEB is supplying to the customers. From the records, it is seen that the manufacturing unit of the assessee also buys electricity from GEB at the same price of Rs.6.90/- per unit and the same price is being paid to the eligible unit also. The case of the department is that since assessee is generating electricity and supplying it to the manufacturing unit, therefore, functionally it is similar to entities which are generating electricity and not which are into distribution of electricity. What is required to be seen u/s. 80IA (8) is that, where any goods or services provided by the eligible business or transfer to any other business carried on by the assessee, the same should correspond to market value of such goods and services. The market value has to be seen qua the price in which such goods or services would ordinarily be fetched in the open market, i.e., whether in the open market the price of such goods and services are available or not? Here assessee is a captive service provider for generating electricity and to supply and distribute to the manufacturing unit which otherwise would have bought from the open market. The price has to be seen what the manufacturing unit is paying in the open market. This precisely has been dealt by the ***Hon'ble Gujarat High Court*** *in the case of* ***PCIT vs. Gujarat Fluorochemicals Ltd.,*** *and also by the* ***Hon'ble Jurisdictional High Court in the case of CIT vs. Reliance Industries Ltd.****, wherein the Courts had held that if the assessee had set up a captive power generating unit and provided electricity to its another unit and claimed deduction under section 80-IA in respect of profits arising out of such activity, then violation of electricity provided to another unit should be at the rate at which electricity distribution companies were allowed to supply electricity to the consumers. This judgment has been distinguished by ld. TPO / ld. DRP holding that these judgments relate to assessment years where SDT provisions were not applicable. We are not inclined to agree to such a view that these judgments have become redundant and Explanation (i) is no more applicable after the introduction of Clause (ii) w.e.f. 01/04/2013, because, the statute has not*

omitted clause (i). Thus, in our opinion these judgments still holds the field and once the market value of such price on which electricity is sold to another unit of the assessee, the same can be compared with the electricity distribution entities for supplying to the customers in the open market. Accordingly, there is no infirmity in the contention of the assessee that per unit electricity sold to the non-eligible unit at Rs.6.90 per unit is the market value.

17. The findings and the ratio of the aforesaid decision clearly applies on the fact of the present case also.

18. Ld. DR had stated that the captive power plants cannot be compared to DISCOMs and therefore, the price at which DISCOM sales power cannot be considered at the market value for the purpose of Section 80IA because herein, the tested party should be the non-eligible unit and their FAR is different from DISCOMs. This issue too has been dealt in detail by the Tribunal in the case of M/s. Tata Chemicals Ltd in detailed which has been finally concluded in para 16 above, wherein the Tribunal has clearly held that for the purpose of 80IA(8), clause *(i)* of *Explanation* would apply with reference to price at such goods or services would ordinarily fetch in the open market and since power purchaser of power in the facts of the present case is the consumer of the power and not a distributor of the power, the open market rate to be considered in the market where electricity sold to the consumers. Here the assessee has paid the purchase power to DISCOMs at the same rate which it has paid to its captive power plants. Thus, this contention raised by the Revenue is dismissed.

19. Secondly, coming to the contention of the safe harbor rules have to be applied but we have already held that there is no application of safe harbor rules to Clause (i) of the Explanation to Section 80IA and accordingly, the decision of the Hon'ble Jurisdictional High Court in the case of Reliance Industries Ltd. reported in 421 ITR 686 would clearly apply.

20. Lastly, so far as average market value in Indian Energy Exchange platform is less than Rs.7.64 and Rs.8.46 adopted by the assessee and therefore, the rate of purchase of power by DISCOMs is more than fair, however, there is no such data which has been provided to us and apart from that, the rates on which power is available through Indian Energy Exchange cannot be applied, because these are not the rates to the consumers but rates to the DSICOMs. Thus, our same reasoning given in the decision of M/s. Tata Chemicals Ltd. will apply to the case of the assessee. Accordingly, following the ratio in the decision of M/s. Tata Chemicals, this issue is decided in favour of the assessee and consequently the entire adjustment made by the ld. TPO is directed to be deleted.

21. The next issue relates to disallowance of interest paid on Perpetual Non-Convertible Debentures (PNCDs).

22. The brief facts are that during the previous year ending 31/03/2011 on private placement basis issued unsecured perpetual hybrid securities in the form of non-convertible debentures in two tranches of Rs.1,500 Crores in March 2011 and Rs.775 Crores in May 2011, each carrying for the first 10

years, coupon rates of return of 11.80% and 11.50% per annum respectively. The funds raised to this issue were to be replaced for general corporate purpose for which detailed memorandum was given before the authorities below in the earlier years. During the relevant assessment year 2019-20, assessee has paid interest to the bond holders, i.e., return on the bond of Rs. 266,12,54,846/- in connection with the issue of PNCDs the interest paid was reduced from post tax profit by the assessee and had claimed as deduction. The ld. AO held that the amount of perpetual bond has not been shown in the balance sheet as debts, albeit it has been shown as non-current and current liabilities. The assessee has not charged its return on perpetual bonds to its profit and loss account under the financial cost and same has been taken as post profit distribution, which means it is an application of profit or income. Thus, he held that there is no doubt from the accounting treatment given to this transaction which is given the colour of equity in disguise and assessee itself has treated the payment in the books as not allowable as business expenditure and it has not been charged to the profit and loss account under the head financial expenditure which is also evident from the auditor's report. He further held that in A.Y.2016-17, ld. DRP has upheld the disallowance on the same issue and the issue has not reached finality and accordingly, the same was disallowed by the ld. AO. The ld. DRP has also confirmed the said disallowance on the ground that same has been confirmed in the earlier years.

23. Before us, ld. Counsel for the assessee submitted that this issue now stands covered by the decision of the Tribunal in assessee's own case for the A.Y.2011-12 and 2012-13 in ITA No.1315/Mum/2022 and 1316/Mum/2022 and for the A.Y.2016-17 and 2017-18 in ITA No.1340/Mum/2021 and 2374/Mum/2022.

24. Both the parties have admitted that this issue is covered by the decision of the Tribunal in earlier years. The relevant observation of the Tribunal reads as under:-

> *"4.4 In respect of ground no. 4 relating to disallowance of interest paid on Perpetual Non-Convertible Debentures, the learned AR submits that interest on debentures was disallowed in proceedings u/s 263 of the Act in assessment years 2011-12 and 2012-13. The assessee assailed the findings of Principal Commissioner of Income Tax in appeal before the Tribunal in ITA No.1315/MUM/2022 for AY 2011- 12 and in ITA No.1316/MUM/2022 for AY 2012-13. The Tribunal vide common order dated 23/12/2022 held that interest paid on debentures is allowable deduction u/s 36(1)(iii) of the Act. The debentures under reference are the same that were subject to matter of dispute in proceedings u/s 263 in AYs 2011-12 and 2012-13".*

25. Since this precise issue is covered in favour of the assessee on similar facts and reasoning by the ITAT orders of the earlier years, therefore, same is followed in this year also. Accordingly this issue is decided in favour of the assessee.

26. Next issue relates to disallowance of expenditure incurred on compensatory aforestation. During the previous year relevant to A.Y.2019-20 assessee has incurred Rs.1,81,26,02,521/- towards compensatory aforestation for carrying out planting operation.

The case of the assessee was that, whenever an authorised land is required to be diverted for non-forest purposes, i.e. industry or mining etc., the forest clearance is required to be obtained by lessee or user agency in accordance with the applicable provisions of Forest Conservation Act, 1980 and various guidelines issued by the Ministry of Environment, as forest climate changes from time to time. It has also elaborated various prior approvals and procedure laid down by the Ministry as well as Hon'ble Supreme Court direction in case of T.N. Godavarman Thirumulipad vs. Union of India & Ors in Writ Petition No. 202 of 1995 (SC), wherein it was observed that compensatory aforestation fund was to be created in which of the monies received from the user agency towards compensatory aforestation, etc., same shall be deposited and such fund can be utilized for undertaking for aforestation and re-generation and production of forest. It was also brought to the notice that this issue has been received in favour of the Tribunal in assessee's won case for A.Y.2006-07 and in the earlier years.

27. However, the ld. AO has made the addition on the ground that this issue has been decided by the ld. DTP in A.Y.2016-17 and department has preferred the appeal before the Hon'ble Bombay High court against the Tribunal order.

28. We find that this issue has been decided in A.Y.2016-17 and 2017-18. The relevant portion of the Tribunal order is reproduced as under:-

6.4. In ground no. 4 of appeal, the assessee has assailed

disallowance of interest paid on Perpetual Non-Convertible Debentures (PNCD). The assessee has claimed interest paid amounting to Rs.266,17,02,198/- u/s 36(1)(iii) of the Act. The AO rejected the assessee's claim on the ground that the said expenditure claimed is not in the nature of interest. The assessee is not under obligation to repay Perpetual Debentures and hence, returns of such debentures cannot be classified as interest per se under the definition of interest under the provisions of the Act.

We find that in AY 2011-12 and 2012-13, the PCIT had invoked revisional jurisdiction on the same issue. The matter travelled to the Tribunal. The Tribunal vide order dated 23/12/2022 (supra) held as under:

"4.7. We find that the assessee during the course of assessment proceedings itself had submitted the entire facts of the case by placing on various provisions of the Companies Act and SEBI Regulations and had also taken efforts to explain the meaning of the term "debentures", "debts", "bonds", "shares" etc., under provisions of various Acts. The assessee had specifically pointed out in para 5 of its reply filed before the Id. AO vide letter dated 27/02/2015 filed on 02/03/2015 thatthe purpose of issue of this Hybrid Securities is clearly set out in page 39of the Information Memorandum wherein it specifies that utilisation of funds proposed to be raised through this private placement will be for general corporate purposes, however, excluding specifically acquisition or purchase of land, investment in equity/capital markets. The main case of the Revenue is only that the perpetual debentures issued are akin to equity and hence, it does not fall under the ambit of borrowing and accordingly, no interest would become allowable on the said alleged borrowing. In this regard, we find that assessee had already explained the very same query before the Id. AO at the time of assessment proceedings itself which is evident from the reply filed by the assessee which is reproduced hereinabove at the beginning of the order. Moreover, we also find that these bonds were indeed repaid by the assessee on 18/03/2021 with interest and on 11/05/2021 with interest. The evidences in this regard are enclosed in pages 254 and 255 of the paper book filed before us and the fact of repayment of these borrowings with interest had also been duly notified by the assessee to BSE

Ltd. and NSE Ltd as per the requirement of SEBI regulations. For the sake of convenience, the intimation given to BSE and NSE are reproduced hereunder:

March 18, 2021

BSE Limited
Phiroze Jeejeebhoy Towers,
Dalal Street, Fort
Mumbai - 400 001.
Maharashtra, India.
Scrip Code: **500470/890144**
947146 (PHS)

National Stock Exchange of India Limited
Exchange Plaza, 5th Floor, Plot No. C/1,
G Block, Bandra-Kurla Complex, Bandra (E),
Mumbai - 400 051.
Maharashtra, India.
Symbol: **TATASTEEL/TATASTLPP**

Dear Madam, Sirs,

11.80% Perpetual Hybrid Securities with ISIN INE081A08165 aggregating to ₹1,500 crore ('PHS')

This is with reference to our letters dated November 13, 2020 and February 11, 2021 intimating about the exercising of call option to redeem the abovementioned PHS in full, together with final interest at the rate of 11.80% p.a. (payable semi-annually) on March 18, 2021 and setting the record date for the same.

In view of the above and in terms of Regulation 57(1) of the SEBI (Listing Obligations and Disclosures Requirements) Regulations, 2015, we certify that final interest at the rate of 11.80% p.a., along with full Principal amount of ₹1,500 crore was paid on the above mentioned PHS today i.e. on March 18, 2021.

This is for your information and records.

Yours faithfully,
Tata Steel Limited

Parvatheesam Kanchinadham
Company Secretary &
Chief Legal Officer (Corporate & Compliance)

May 11, 2021

National Stock Exchange of India Limited
Exchange Plaza, 5th Floor, Plot No. C/1,
G Block, Bandra-Kurla Complex, Bandra (E),
Mumbai - 400 051.
Maharashtra, India.
Symbol: **TATASTEEL/TATASTLPP***

Dear Madam, Sirs,

11.50% Perpetual Hybrid Securities with ISIN INE081A08173 aggregating to ₹775 crore ('PHS')

This is with reference to our letter dated April 7, 2021 intimating about the exercising of call option to redeem the abovementioned PHS in full, together with final interest at the rate of 11.50% p.a. (payable semi-annually) on due date, May 11, 2021 and setting the record date for the same.

In view of the above and in terms of Regulation 57(1) of the SEBI (Listing Obligations and Disclosures Requirements) Regulations, 2015, we certify that final interest at the rate of 11.50% p.a., along with full Principal amount of ₹775 crore was paid on the above mentioned PHS today i.e. on May 11, 2021.

This is for your information and records.

Yours faithfully,
Tata Steel Limited

Parvatheesam Kanchinadham
Company Secretary &
Chief Legal Officer (Corporate & Compliance)

4.8. This categorically goes to prove that it is not a case of equity and the issue of perpetual bonds is only borrowing made by the assessee. Since the said borrowing has been used for business

purposes of the assessee, the interest paid thereon would be squarely allowable as deduction u/s 36(1)(iii) of the Act. Hence, even on merits, the action of the ld. PCIT would have no legs to stand."

It is not disputed by the Department that the PNCD on which the assessee has paid interest are the same that were subject matter of dispute in AY 2011-12 and 2012-13 in proceedings u/s 263 of the Act. Thus, in the light of the decision of Co-ordinate Bench on same issue in assessee's own case in preceding assessment year, we hold that the interest expenditure in respect of Perpetual Non-Convertible Debentures is an allowable expenditure u/s 36(1)(iii) of the Act. Thus, ground no. 4 of the appeal is allowed."

29. Accordingly, this issue is decided in favour of the assessee.

30. Next issue raised is disallowance of provision for leave encashment.

31. The brief facts are that during the year under consideration the assessee in its books of accounts made a provision of Rs. 292,12,33,381/- on account of leave encashment. However, in view of the decision of the Hon'ble Supreme Court in the case of Union of India vs. Exide Industries Ltd., reported in [2020] 116 taxmann.com 378 (SC), the assessee its return of income withdrew its claim on the basis of the provision accounted for in the books and made a claim on cash basis alone. The claim for deduction of Rs. 324,27,46,507/- on payment basis made by the assessee was as under:

a) Amount discharged of prior period liability after the date of furnishing Return of income for FY 18 till 31/03/2019 Rs. 123,99,28,630/-

(b) Amount paid subsequent to 31/03/2019 but before the date of furnishing Return under section 139(1) of the Act: Rs. 200,28,17,876/-

32. The AO and DRP following their finding for AY 17-18 denied the claim of the assessee. In doing so the AO has erroneously proceeded on the footing that the assessee had made a claim in excess of the amount actually paid. During the course of the hearing, this Bench has required the assessee to demonstrate from the paper book that the claim made by the assessee in its return of income did not exceed the amount paid by it as contemplated under section 43B(f) of the Act, i.e., upto the date of filing of the return of income for AY 2019-20.

33. Before us ld. Counsel for the assessee drew our attention to page 13 of the paper book which is Appendix VI to the tax audit report giving information of all amounts covered under section 43B of the Act which have remained payable as on the date of filing of the return of income for AY 19-20. Item 26 of the table at Page 13 is the amount of provision for leave encashment made in the books of accounts. The aggregate of all such amounts is Rs 1141,49,25,122/-. Further, in the computation of income for the year under consideration, assessee had disallowed that is added back a sum of Rs. 816,68,51,587/-. The said disallowance has been computed as under:-

Sr. No.		Particulars	Amount
i.		Aggregate of items falling under section 43(b) - this includes the claim for leave encashment on provision basis of Rs.292,12,33,381 (Item 26 on Page 13 of the Paper book)	1141,49,25,122
ii.	Less	Items not forming a part of profit as per P&L A/c and therefore not considered for disallowance - Stamp Duty (Item 16 at Page 13 read with Note 1)	53,27,028
Amount of disallowance that ought to have been made if the assessee was making its leave encashment claim on the basis of provision made.			**1140,95,98,094**
iii	Less	Since the appellant is claiming leave encashment on payment basis, the above disallowance must be reduced by the amount of leave encashment paid during the year and before the filing of the return for AY 2019-20 (last paragraph 9f/Note 2 on Page 13 of the paperbook)	324,27,46,507

Net disallowance under section 43(b) after taking into consideration claim for leave encashment on payment basis, as appearing in the computation of return of income (Page 1 of the paperbook – Item 14)	**816,68,51,587**

34. That the amount of Rs.324,27,46,507/- has been certified by the auditor as comprising of amounts paid during the year and before the filing of the return for AY 19-20 as under (Page 13 of the paper book - Note 2 to the Appendix VI to the Tax Audit Report):

> *"Without prejudice to the above and in the alternative the assesses makes a claim on cash basis for a total income of Rs. 324,27,46,507/-, comprising of the amounts paid in FY'19 and till the date of checking. The details are as follows: a) Amount paid subsequent to 31/03/19 but before the date of furnishing return under section 139(1): Rs. 200,28,17,876/- b) Amount discharged of prior period liability after the date of furnishing Return of Income for FY'18 till 31/03/19: Rs. 123,99,28,630/-."*

Thus, it was submitted that the claim of Rs.324,27,46,507/- towards leave encashment, it has made a claim on payment basis alone and no claim in excess of the amounts that are paid during the year and before the filing of the return of A.Y.2019-20. Further, this issue is squarely covered by the decision of the Tribunal in assessee's own case for A.Y.2017-18.

35. After hearing both the parties and on perusal of the facts and material placed on record, we find that assessee in the computation of income has added back sum of Rs. 816,68,51,587/- in the manner provided above. In so far as the amount which has been claimed of Rs. 324,27,46,507/- which

has been certified by the auditor comprises of amounts actually paid during the year before the filing the return for A.Y.2019-20 which is also evident from note 2 of the TAR. Once the claim has been made towards leave encashment on payment basis alone and there is no excess claim of the amount which has been paid during the year and the same has to be allowed. This issue has also been decided by the Tribunal in A.Y.2016-17 and 2017-18 which reads as under:-

10. We have heard the submissions made by rival sides on the issue of disallowance of provisions for leave encashment. A perusal of the draft assessment order reveals that the AO in para 10.2 of the draft assessment order has observed that the assessee's claim for allowability of the provision for leave encashment in excess of the amounts actually paid till the date of filing of return of income cannot be entertained. Whereas, the case of the assessee is that claim has been made only on the basis of actual payments. The AR of the assesseehas also drawn our attention to Note no.4 to the accounts, the same reads as under:

> *"4) The Company contends that the provision for leave encashment is not disallowable under section 43B in view of the decision of the Hon'ble High Court of Calcutta in the case of Exide Industries Limited vs. Union of India (2007) 292 ITR 470 (Cal.) and the Hon'ble Kerala High Court in the case of CIT vs. M/s Hindustan latex Ltd. (ITA No. 64 of 2012) (Ker.). The assessee changed the practice of claiming allowance with respect to leave salary from cash basis to accrual basis beginning FY 12. Without prejudice to the above, the assessee in the alternative makes a claim on cash basis for an amount of Rs.2,73,74,05,416/-. This amount comprises the following (a) Payment made after Return of Financial Year 2016-Rs.1,15,02,92,029/- and (b) An Amount paid subsequent to 31/03/2017-Rs.1,58,71,13,387/-."*

In the facts of the case and the decision of Co-ordinate Bench in assessee's own case, we hold that the amounts actually paid

towards leave encashment is allowable as deduction. The assessee has placed on record Tax Audit Report for AY 2017-18. The same was available before the AO, as is evident from Assessment Order para 10.1. The AO has erred in holding that the assessee has claimed entire provision i.e. in excess of amount actually paid. After examining the Audit Report, we find that the following sums are allowable:-

Paid during 01/12/2016 to 31/03/2017 – Rs.115,02,92,029/-

Paid during 01/04/2017 to 30/11/2017 – Rs.158,71,13,387/-

The aforesaid sums were paid before the due date of filing return of income u/s 139(1) of the Act. Hence, ground no. 4 is allowed pro-tanto.

36. Thus, this issue is allowed in the aforesaid manner.

37. Next issue relates to disallowance u/s.14A r.w.r. 8D. During the year under consideration, assessee has returned dividend income which was claimed as exempt in the return of income. Assessee has made suomoto disallowance of Rs.4,72,25,937/- u/s.14A on the basis of disallowance computed in tax audit report. The basis of computation and allocation of particulars of expenses have been given in detail by the Chartered Accountant in detail after analyzing various heads of income. However, the ld. AO proceeded to make the disallowance of Rs.7,09,74,178/- after making addition of Rs. 1,18,20,115/- by taking 1% of average of monthly investments.

38. After hearing both the parties, we find that before the ld.AO assessee has given the entire basis of computation of

disallowance which was based on allocation of administrative and management expenses which included employee cost, rent expenses, electricity charges, maintenance expenses and other office overheads and other allocable expenses. Based on that following allocation of expenditure has been given for the purpose of disallowance u/s 14A:-

SI. No.	Expense Head	Amount (Rs.)	Remarks
I	Demat Expenses	7.12,863	Direct expenses
2	Employee Cost	2.94,20,726	Allocation as per para 4 A
3	Rent Expenses	86.16,473	Allocation as per para 4 B
4	Electricity Charges	6,71,897	Allocation as per para 4 C
5	Maintenance Expenses and Other Office Overheads	58.03,978	Allocation as per para 4 D
6	Other Allocable Expenses on Travelling. Telephone/Mobile. Stationery etc.	20,00,000	Allocation as per para 4 E
Total Allocated Expenses		4,72,25,937	

39. From the perusal of the allocation of expenses, it is seen that assessee has classified cadre of employees involved in

investments functions, their roles and responsibilities, their functions, designations, salary and time allocated to investment activity. Apart from that, assessee has also taken proportionate disallowance of rent, electricity, maintenance expenses and other office overheads. On such details and analysis of expenditure and allocation, nowhere ld. AO has rebutted or recorded his satisfaction as to what was the defect in any such allocation having regard to the accounts maintained by the assessee and has given his general remark, like investments cannot be managed without monitoring and research, etc. and has given various observations of the kind of cost which are involved without any further analysis, whether these cost can be allocable for the earning of exempt income when most of the investments have been made in group companies. Such an approach of the ld. AO completely overlooking the detailed analysis and allocation given by the assessee for offering *suo moto* disallowance and without even examining them having regard to the nature of expenses and accounts maintained by the assessee, cannot be upheld. It is imperative that AO has to record his satisfaction on the claim made by the assessee having regard to the accounts. This view is squarely covered by the decision of the Hon'ble Delhi High Court in the case of H.T. Media vs. PCIT reported in (2023) 291 Taxman 423 and Hon'ble Bombay High Court in the case of CIT vs. Sociedade De Fomento Industrial (P) Ltd., wherein the Courts have held that satisfaction of the ld. AO is paramount to reject the claim of the assessee. Apart from that it is seen that almost 97% of the investment

having made in group companies as strategic investment. Thus, certain remarks of the AO that lot of expenses are incurred on market research and survey before making the investments is not applicable on the facts of the present case. Moreover, he has not even analysed the entire working and allocation of the cost given by the assessee and therefore, he cannot proceed to make disallowance mechanically under rule 8D for purpose of section 14A. Accordingly, such a disallowance made by the ld. AO is deleted.

40. Whether the issue relates to addition u/s.14A to book profit u/s.115JB. This issue is now stands covered by the decision of assessee's won case for the A.Y.2016-17 and 2017-18 and the decision of Hon'ble Bombay High Court in the case of CIT vs. Bengal Finance & Investment P. Ltd. (ITA No.337 of 2013). Thus, disallowance u/s.14A in the book profit is deleted.

41. In so far as claim of deduction of interest of PNCDs in the computation u/s.115JB not granted, this issue is set aside to the file of the ld. AO in view of the decision of the Tribunal in assessee's own case for A.Y.2016-17 and 2017-18. Accordingly, following the same line, this issue is set aside.

42. Coming to the issue raised in ground No. 9,10,11 & 12 with regard to computation of book profit u/s.115JB, ld. Counsel submitted that already rectification application u/s 154 has been filed before the ld. AO which is pending. He thus requested that direction to be given to the ld. AO to dispose of the rectification

application. Accordingly, we direct the ld.AO to dispose of the rectification application filed by the assessee.

33. In the result, appeal of the assessee is treated as allowed.

Order pronounced on 7th November,2023.

Sd/-

(PADMAVATHY S)	**(AMIT SHUKLA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai; Dated 07/11/2023
KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai