IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/TAX APPEAL NO. 183 of 2020

With
R/TAX APPEAL NO. 184 of 2020

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BHARGAV D. KARIA

and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

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Approved for Reporting	Yes	No
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THE PRINCIPAL COMMISSIONER OF INCOME TAX VADODARA-2
Versus
M/S SUN PHARMA SIKKIM

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Appearance:
MR RUTVIJ R PATEL(10615) for the Appellant(s) No. 1
MR B S SOPARKAR(6851) for the Opponent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE BHARGAV D. KARIA**
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 24/08/2026

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

1. Heard learned Senior Standing Counsel Mr.

Rutvij R. Patel for the appellant-Revenue and learned advocate Mr. B.S. Soparkar for the respondent.

2. These Tax Appeals are filed by the Revenue under section 260A of the Income Tax Act, 1961 (For short “the Act”) against the common judgment and order dated 16.05.2019 passed by the Income Tax Appellate Tribunal, Ahmedabad Bench (For short “the Tribunal”) in ITA No.3541/MUM/2015 for Assessment Year 2010-2011 and in ITA No.212/Mum/2017 for Assessment Year 2011-2012 respectively.

3. Tax Appeal No.183 of 2020 is admitted for consideration of the following substantial questions of law:

> “(A) Whether on the facts and in circumstances of the case, the learned ITAT has erred in law and on facts in allowing the claim of the assessee for deduction u/s 80IE of the Act without appreciating that mere submission of journal entries

generated in computer cannot be treated as authentic document for establishing purchase of plant and machinery and that the assessee firm i.e. M/s. Sun Pharma Sikkim, as held by the Assessing Officer, was constituted by reconstruction of existing business of M/s. Sun Pharma Industries?

(B) Whether on the facts and in circumstances of the case, the learned ITAT has erred in law and on facts in allowing the claim of the assessee for deduction u/s 80IE of the Act even though the assessee firm was formed by the splitting up and reconstruction of the existing business of M/s. Sun Pharma Industries and the condition of using less than 20% of old/used machinery has not been fulfilled by the assessee?

(C) Whether on the facts and in circumstances of the case, the learned ITAT has erred in law and on facts in deleting the disallowance of deduction u/s 80IE(6) r.w.s. 80IA(10) on apportionment of selling and distribution expenses incurred by the working partner without appreciating the fact that all the sales and distribution expenses were debited to Sun Pharma Industries Ltd. (SPIL) and no allocation was made to Sun Pharma Industries (SPI) and Sun Pharma Sikkim (SPS) units as has been revealed during the proceedings of survey action u/s. 133A?

(D) Whether on the facts and in circumstances of the case, the learned ITAT has erred in law and on facts in deleting the disallowance of deduction u/s. 80IE(6) r.w.s. 801A(10) on apportionment of research and development expenses incurred by the working partner without appreciating the fact that expenditure related to R&D was debited only in the hands of Sun Pharma Industries Ltd. (SPIL) but no allocation was made to Sun Pharma Industries (SPI) and Sun Pharma Sikkim (SPS) units as has been revealed during the proceedings of survey action u/s 133A and the working of allocation of R&D activity on the basis of turnover in the ratio of 3:1 is just, proper and reasonable?

(E) Whether on the facts and in circumstances of the case, the learned ITAT has erred in law and on facts in deleting the disallowance of deduction u/s 80IE(6) r.w.s. 80IA(10) on apportionment of royalty expenses, without appreciating the fact that the assessee was using trademarks, brands and logo of Sun Pharma Industries Ltd. (SPIL) for which neither any fee or royalty is charged and hence disallowance made @8% of sales [as in Sun Pharma Industries (SPI)] adopted by the Assessing Officer is just, proper and reasonable?

(F) Whether on the facts and in

circumstances of the case, the learned ITAT has erred in law and on facts in deleting the disallowance of deduction u/s 80IE (6) r.w.s. 801A(10) on apportionment of management fees without appreciating the fact that the affairs of the assessee were managed by Sun Pharma Industries Ltd. (SPIL), the working partner, and nothing is paid or charged by Sun Pharma Industries Ltd. (SPIL) and hence disallowance made @2% of turnover adopted by the Assessing Officer is just, proper and reasonable?

(G) Whether on the facts and in circumstances of the case, the learned ITAT has erred in law and on facts in deleting the disallowance of deduction u/s 80IE(6) r.w.s. 801A(10) on central excise duty incentive by relying upon orders of the Hon'ble High Court of Jammu & Kashmir followed by the learned ITAT in the case of the sister concern of the assessee firm, M/s. Sun Pharma Industries (SPI) and not appreciating the judgments of the Hon'ble Supreme Court in the case of Ponni Sugars [2008] 306 ITR 392 & Sahney Steel case [1997] 228 ITR 253?

(H) Whether on the facts and in circumstances of the case, the learned ITAT has erred in law and on facts in deleting the disallowance of deduction u/s.80IE(6) r.w.s. 80IA(10) on remuneration to working partner of Rs.67,25,68,237/- without appreciating the Assessing Officer's finding in the assessment order particularly with regard to assessee's reliance on supplementary partnership deed for inflating its profit for claiming higher deduction u/s.80IE(6) r.w.s. 80IA(10) of the Act?"

4. Tax Appeal No.184 of 2020 is admitted for consideration of the following substantial questions of law:

"(A) Whether on the facts and in circumstances of the case, the learned ITAT has erred in law and on facts in allowing the claim of the assessee for deduction u/s 80IE of the Act without appreciating that mere submission of journal entries generated in computer cannot be treated as authentic document for establishing purchase of plant and machinery and that the assessee firm i.e. M/s. Sun Pharma Sikkim, as held by the Assessing Officer, was constituted by reconstruction of existing business of M/s. Sun Pharma Industries?

(B) Whether on the facts and in circumstances of the case, the learned ITAT has erred in law and on facts in upholding the view taken by the CIT(A) that the rejection of books of accounts in the present case is not legally tenable as the Assessing Officer after rejecting the books of accounts has not carried-out assessment as per the provisions of Section 144 of the Act even though as per the provision of Section 145(3) of the Act it is not mandatory for the Assessing Officer to make assessment in the manner prescribed in Section 144 Act?

(C) Whether on the facts and in circumstances of the case, the learned ITAT has erred in law and on facts in allowing the claim of the assessee for deduction u/s 80IE of the Act even though the assessee firm was formed by the splitting up and reconstruction of the existing business of M/s.Sun Pharma Industries and the condition of using less than 20% of old/used machinery has not been fulfilled by the assessee?

(D) Whether on the facts and in circumstances of the case, the learned ITAT has erred in law and on facts in deleting the disallowance of deduction u/s 80IE(6) r.w.s. 80IA(10) on apportionment of selling and distribution expenses incurred by the working partner without appreciating the fact that all the sales and distribution expenses were debited to Sun Pharma Industries Ltd. (SPIL) and no allocation was made to Sun Pharma Industries (SPI) and Sun Pharma Sikkim (SPS) units as has been revealed during the proceedings of survey action u/s. 133A?

(E) Whether on the facts and in

circumstances of the case, the learned ITAT has erred in law and on facts in deleting the disallowance of deduction u/s 80IE(6) r.w.s. 80IA(10) on apportionment of research and development expenses incurred by the working partner without appreciating the fact that expenditure related to R&D was debited only in the hands of Sun Pharma Industries Ltd. (SPIL) but no allocation was made to Sun Pharma Industries (SPI) and Sun Pharma Sikkim (SPS) units as has been revealed during the proceedings of survey action u/s 133A and the working of allocation of R&D activity on the basis of turnover in the ratio of 3:1 is just, proper and reasonable?

(F) Whether on the facts and in circumstances of the case, the learned ITAT has erred in law and on facts indeleting the disallowance of deduction u/s 80IE(6) r.w.s. 80IA(10) on apportionment of royalty expenses, without appreciating the fact that the assessee was using trademarks, brands and logo of SPIL for which neither any fee or royalty is charged and hence disallowance made @8% of sales (as in SPI) adopted by the Assessing Officer is just, proper and reasonable?

(G) Whether on the facts and in circumstances of the case, the learned ITAT has erred in law and on facts in deleting the disallowance of deduction u/s 80IE(6) r.w.s.

80IA(10) on apportionment of management fees without appreciating the fact that the affairs of the assessee were managed by Sun Pharma Industries Ltd. (SPIL), the working partner, and nothing is paid or charged by Sun Pharma Industries Ltd. (SPIL) and hence disallowance made @2% of turnover adopted by the Assessing Officer is just, proper and reasonable?

(H) Whether on the facts and in circumstances of the case, the learned ITAT has erred in law and on facts in deleting the disallowance of deduction u/s 80IE(6) r.w.s. 80IA(10) on central excise duty incentive by relying upon orders of the Hon'ble High Court of Jammu & Kashmir followed by the learned ITAT in the case of the sister concern of the assessee firm, M/s. Sun Pharma Industries (SPI) and not appreciating the judgments of the Hon'ble Supreme Court in the case of Ponni Sugars [2008] 306 ITR 392&Sahney Steel case [1997] 228 ITR 253?

(I) Whether on the facts and in circumstances of the case, the learned ITAT has erred in law and on facts in deleting the disallowance of deduction u/s. 80IE(6) r.w.s. 80IA(10) on remuneration to working partner of Rs. 67,25,68,237/- without appreciating the Assessing Officer's finding in the assessment order particularly with regard to assessee's reliance on supplementary

> partnership deed for inflating its profit for claiming higher deduction u/s. 801E(6) r.w.s. 80IA(10) of the Act?"

5. On perusal of the above questions of law, it appears that questions of law are identical in both the tax appeals, however Question No. (B) in Tax Appeal No.184 of 2020 is an additional substantial question of law.

6. Brief facts of the case are that the assessee is a partnership firm constituted by way of partnership deed dated 15.01.2009 with the following partners:

   i) M/s. Sun Pharmaceuticals Industries Ltd. (SPIL)-97.50%.

   ii) Sun Pharmaceuticals Key Employees Benefit Trust (SPIKEBT)-2.00%.

   iii) M/s. Sun Pharma Advanced Research

Co.Ltd., Key Employees Benefit Trust (SPARCKEBT)-0.50%.

7. The assessee is engaged in the business of manufacturing and sale of pharmaceutical drugs/medicines. Plant and Machineries and other assets of Sikkim unit of M/s. Sun Pharmaceutical Industries Ltd. were transferred to the assessee firm on 16.01.2009 by an assignment deed for a net value of Rs.41,61,35,690/-. The said transaction was given effect on 05.03.2009 by raising Debit Note along with assets and liabilities.

8. For the Assessment Year 2010-2011, the assessee filed its return of income on 15.10.2010 declaring total income at Rs. NIL and for the Assessment Year 2011-2012, return of income was filed on 29.9.2011 declaring total income at Rs. NIL. The assessee had

claimed deduction under section 80IE of the Act and therefore, had shown the income at Rs. NIL for both the years.

9. The Assessing Officer passed orders dated 19.03.2013 and 12.3.2014 for Assessment Years 2010-2011 and 2011-2012 respectively under section 143(3) of the Act. The Assessing Officer for the Assessment Year 2011-2012 has rejected book results and thereafter disallowed the claim of deduction made under section 80IE of the Act. The Assessing Officer disallowed the claim of the assessee under section 80IE on the ground that the assessee failed to fulfill the requisite conditions mentioned in the said section and in the alternative, it was observed that the eligible profit for claim of deduction computed by the assessee was wrong as certain expenditure ought to be apportioned in the units which were not eligible for deduction

under section 80IE of the Act. The Assessing Officer was of the opinion that the assessee was not entitled for deduction under section 80IE even if it assumed for the sake of argument that it was entitled for deduction, then such deduction was to be granted on a reduced amount after bifurcation of the expenditure required to be allocated to the unit of the assessee, out of those units which were not eligible for the deduction.

10. Being aggrieved by the assessment order, the assessee preferred an appeal before the CIT(Appeals) who accepted the claim of the assessee and held that the assessee is entitled for deduction under section 80IE of the Act. CIT (Appeals) also set aside the assessment order regarding the apportionment of expenditure from non-eligible unit to assessee unit before computing eligible profit for grant of deduction under section

80IE of the Act.

11. Being aggrieved by order passed by the CIT(Appeals), Revenue preferred an appeal before the Tribunal raising nine grounds of appeal for the Assessment Year 2010-2011.

12. The assessee also preferred Cross Appeals being aggrieved by CIT(Appeals) upholding the disallowance of Rs.8 lacs for Assessment year 2010-2011 and Rs.1,39,166/- for Assessment Year 2011-2012 which was not pressed on the ground of smallness of amount involved. The other ground raised by the assessee was excluding the amount representing scrap from eligible profit for grant of exemption under section 80IE for Assessment Year 2010-2011 which was partly allowed by the Tribunal subject to the grounds of appeal of the Revenue as to whether the assessee is entitled for any

deduction under section 80IE of the Act or not.

13. The Tribunal dismissed the appeal of the Revenue and partly allowed the assessee’s appeal for the Assessment Year 2010-2011 and dismissed the appeal for the Assessment Year 2011-2012.

14. With regard to question No.(A) and (B) in Tax Appeal No.183 of 2020 and Question No. (A) and (C) in Tax Appeal No.184 of 2020 regarding the entitlement of assessee for deduction under section 80IE of the Act and quantification of the eligible profit for computation of such deduction if available in both the appeals, it would be germane to refer to the provisions of section 80IE of the Act which reads as under:

"SECTION 80IE : Special provisions in respect of certain undertakings in North-Eastern States.

(1) Where the gross total income of an assessee includes any profits and gains derived by an undertaking, to which this section applies, from any business referred to in sub-section (2), there shall 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 commencing with the initial assessment year.

(2) This section applies to any undertaking which has, during the period beginning on the 1st day of April, 2007 and ending before the 1st day of April, 2017, begun or begins, in any of the North-Eastern States,-

(i) to manufacture or produce any eligible article or thing;

(ii) to undertake substantial expansion to manufacture or produce any eligible article or thing;

(iii) to carry on any eligible business.

(3) This section applies to any undertaking which fulfils all the following conditions, namely:-

(i) it is not formed by splitting up, or the reconstruction, of a business already in existence:

Provided that this condition shall not apply in respect of an undertaking which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such undertaking as referred to in section 33B, in the circumstances and within the period specified in the said section;

(ii) it is not formed by the transfer to a new business of machinery or plant previously used for any purpose.

Explanation.-The provisions of Explanations 1 and 2 to sub-section (3) of section 80-IA shall apply for the purposes of clause (ii) of this sub-section as they apply for the purposes of clause (ii) of that sub-section."

15. The above provision stipulates that the assessee was entitled to deduction at the

rate of 100% of the profit and gains derived from eligible business of an undertaking to which section 80IE applies from any business referred to in sub-section (2) thereof for ten consecutive assessment years commencing with initial Assessment Year.

16. So far as applicability of sub-section (2) with regard to the undertaking of the assessee is concerned, same is not in dispute. However, dispute is raised by the Assessing Officer relating to the conditions provided in sub-section(3) of section 80IE. The Assessing Officer was of the view that the assessee failed to fulfill the conditions enumerated under sub-section (3) as the assessee-firm was formed by splitting up and reconstruction of existing business of M/s. Sun Pharmaceuticals Industries Limited (SPIL) and total plant and machinery installed in the industrial undertaking included more than

20% of old plant & machinery.

17. The Assessing Officer was of the opinion that the undertaking should not have been formed by splitting up or reconstruction of a business already in existence or it ought not to have been formed by transfer to a new business or plant and machinery previously used for any purpose.

18. Reference was made to Explanations 1 and 2 of sub-section (3) of section 80IA which are made applicable to the provisions of section 80IE of the Act which indicates that value of old plant and machinery should not exceed 20% of the total value of the plant and machinery.

19. The assessee also placed additional evidence before the CIT(Appeals) containing the details of plant and machinery as on

16.1.2009 as well as on 31.3.2010 along with relevant bills chronologically arranged and grouped as appearing in accounts on the ground that since it was the first year of the assessee firm, the bills were kept at the factory at Gangtok (Sikkim) and staff was not well conversant with the assessment proceedings, and therefore, could not submit complete details before the Assessing Officer.

20. CIT(Appeals) called for a remand report from the Assessing Officer on the admission of the additional evidence and thereafter called for a further remand report of such evidence to determine whether the existing plant and machinery exceeds 20% of the old Machinery in the total value of the plant and machinery. In the remand report, the Assessing Officer narrated that the application for grant of license to

manufacture or for sale or for distribution of drugs was dated 21.02.2007 whereas partnership deed by which the assessee firm came into existence was on 15.01.2009 and therefore, the Assessing Officer assumed that unit was functioning from earlier time as a unit of SPIL Dadra and Jammu. However, the assessee contended that the said date was taken on account of typographical error and Form No.24, and the application clearly mentioned the correct date as 21.02.2009 which was verified by the CIT (Appeals) and accepted that license was taken on 21.2.2009 and not on 21.02.2007 as inferred by the Assessing Officer.

21. The Tribunal considering such findings by CIT(Appeals) arrived at the conclusion that the Assessing Officer has taken wrong facts which resulted into wrong conclusion to form a belief that the assessee-firm was

constituted after splitting up and reconstruction of the existing business.

22. Another ground on which the Assessing Officer was of the opinion that though the assessee firm was created on 15.01.2009, Sikkim Unit was already set up by SPIL and when deduction under section 80IE of the Act was denied to SPIL, Sikkim plant was ready for commercial production and the cost was booked in the books of the assessee firm by raising Debit Note on 05.03.2009 via journal entry which was just 15 days prior to the issue of provisional license to manufacture on 20.3.2009 and 46 days prior to the commercial production creating a suspicion about establishment of a new undertaking at Sikkim. The Assessing Officer also made reference to the production and sales of SPIL prior to splitting up and reconstruction and after such establishment of assessee firm at

Sikkim and thereafter, had drawn an inference that the assessee firm was established by splitting up and reconstruction of existing business in violation of sub-section (3) of section 80IE of the Act.

23. However, CIT (Appeals) re-appreciated this aspect by considering the contention raised by the assessee that the entire group was seeking its consolidated shares in the US market and to that end, it was required to secure US FDI approval which means that the units earmarked for production of export products could not be used for the purpose of domestic manufacture also. It was submitted by the assessee that process of compliance with US FDI regulation was time consuming and spanned over 18 to 25 months by demonstrating the facts before the CIT(Appeals) as under:

“**Dadra Unit**:

Date of application: May, 2008

Date of acceptance (EOU authority): July, 2008

Date of acceptance (US FDA authority): July, 2008 various compliances: during July 2008 to December 2009

Date of actual export/s: January, 2010 and onwards

Jammu Unit:

Date of application submitted to NSEZ; April 2009

Date of US FDA application: April 2009

Letter of Permission issued by the Development Commissioner NSEZ: June 2010

Issue of license by Central Excise, Jammu: September 2010

Commencement of production in EOU: October 2010.”

24. On the basis of above details, it was contended by the assessee that US FDI approval to Jammu unit was abandoned as such approval was denied to other applicants whereas the production of medicine at the Jammu Unit suffered a loss due to accident of fire besides general disturbances in Jammu

region.

25. Considering such facts and evidence on record, CIT(Appeals) did not concur with the view of the Assessing Officer and observed that decline in production of Jammu unit and Dadra Unit was on account of business strategy adopted by the group as well as disturbances in the Jammu area. CIT(Appeals) referred to the circular issued by the CBDT to consider the definition of expression "industrial undertaking" and "initial year" provided in section 80IE(7) of the Act as under:

> “4.2.6 With regard to the deduction under section 80IE, it is to be noted that the same is available to an 'industrial undertaking' and the deduction is available from the Initial assessment year. 'Initial assessment year' is defined in section 801E(7)(i) to mean that the assessment year in which the industrial undertaking begins to manufacture or produce. It is also an equally settled position of law that deduction is qua an undertaking

and not qua an assessee. Circular F No.15/5/63-IT(A-1) dated 13.12.1963 of CBDT clarified that a new industrial undertaking taken over by another assessee before the expiry of five year the successor will be entitled to the benefit of unexpired period of five years provided the undertaking is taken over as a running concern. Given that section 84 and 80IE are in parimateria, such deduction is available to an undertaking that acquires a running concern for the unexpired period of deduction. Therefore, once the undertaking remains unaffected or unchanged by subsequent change in the ownership, it cannot be said that the business of the undertaking has been reconstructed. Adverting to the facts of the appellant's case, it can be seen that the appellant had acquired the undertaking from SPI. The only change which took place is the ownership of the undertaking i.e. from SPI to SPS. Everything else remains the same. SPI had also filed an application vide letter dated 5th March 2009 (enclosed in Pages 124 & 125 of the paper book) before the Assistant Commissioner, Central Excise surrendering its Central Excise Registration for the Sikkim unit and stating that ownership of the undertaking has changed and that the capital goods purchased were never installed by SPI. There is also no dispute of the fact that the undertaking was under construction at the time when SPI sold it to the

> Appellant. Accordingly, the unit is transferred before commencement of undertaking. Thus, from the facts on record, the irresistible conclusion is that the undertaking at Sikkim is not formed by splitting up or reconstruction and is a new unit and therefore, is entitled to the claim of deduction under section 80-IE of the Act.”

26. The Tribunal considering the findings of the CIT(Appeals) and on perusal of the record referred to the orders passed by ITAT Amritsar Bench in case of Jammu Unit as well as ITAT Mumbai Bench in case of Dadra unit. The Tribunal upheld the findings of CIT (Appeals) that the assessee-firm was not formed by splitting up and reconstruction of existing business of SPIL by observing as under:

> “21. With the assistance of the ld. representatives, we have gone through the record carefully. The ld. counsel for the assessee submitted that identical aspects have been considered in the case of Jammu unit. made reference to the ITAT order of Amristar Bench as well as ITAT, Mumbai Bench in the case of Dadra unit. We will be taking note

of such details while taking cognizance in CIT(A)'s order in para 4.2.15. The basic question is, whether the AO is able to lay his hand on sufficient material demonstrating the fact that the assessee has been established by splitting up and reconstruction of the existing business of SPI. The circumstances considered by the AO for arriving at a conclusion that it has been formed by splitting up are not sufficient to prove the view point of the AO. A perusal of the CIT(A)'s order would indicate that the ld. CIT(A) has minutely examined each circumstance considered by the AO, and thereafter held that the AO failed to bring any specific instance which can buttress his conclusion. Thus after going through a well reasoned finding of the CIT(A) on this issue, we are of the view that the assessee firm has not been formed by splitting up and reconstruction of existing business of SPI."

27. With regard to second issue raised by the Assessing Officer that the total value of plant and machinery installed in the industrial undertaking included more than 20% of old plant and machinery, the Tribunal considered the facts emerging from record that total amount of plant and machinery of

Rs.49.33 crores were stated to be installed by the assessee, out of which, the plant and machinery having value of Rs.14.98 crores represented old and second-hand machinery. The assessee filed additional evidence before the CIT(Appeals) which were taken on record and remand report was called for. CIT(Appeals) took into consideration the reconciled statement of plant and machinery while taking note of written submissions filed by the assessee to hold that the assessee has not used old plant and machinery exceeding 20% as under:

> "4.2.10 The contentions of the appellant have been duly considered along with the findings AO. On perusal of the impugned order it is seen that while the AO, at the time of assessment noted that the appellant had furnished incomplete details of the addresses of suppliers to prevent verification, no such exercise was undertaken during remand proceedings when the appellant furnished the bills and vouchers for fresh verification. Test-check of the bills produced during these proceedings shows that

the appellant's contention is borne out as follows:

Sr. No.	Name of Vendor	Bill Amount	Observations of AO	Remarks
122-6 & 122-7 in list of duplicate bills	Suvidha Engineers India Ltd.	1,80,544/-	Duplicate	Bill is dated 01/01/2007 and pertains to HVAC System i.e. Heating, AIR conditioning and Ventilation system.
145-1 in list of duplicate bills	Meckins Engineering	2,00,000/-	Xerox copy	This is an original bill for Design and Engineering services
145-6 in list of duplicate bills	Veedhi International	3,47,906/-	Xerox copy	This is an original bill.
122-5 in list of bills where LR etc. is not available	Suvidha Engineers India Ltd.	1,80,544/-	LR not available	Bill is backed up by internal documentation in the form of 'group inward memo (GIM) and bears the stamp of IT & CT Division of Govt. of Sikkim.
37	HI Chem Distributors	24,856/-	LR not available	Delivery challan is available, GIM Details recorded.
65	Ravi Kiran Industries	3,93,520/-	LR not available	LR available Sikkim Check Post Stamp on Bill
87	SaurashtraSysto Pack	1,30,532/-	LR not available	Bill pertains to Unique Bursting Strength Board Tester. LR Available
95	System Anatech (India) P. Ltd.	71,650/-	LR not available. TIN is of Sikkim State-in the	Delivery Challan is available. TIN form shows

			name of Sudhir V. Valla	registered in the name of Sudhir Valia under the trade name ‘Sun Pharmaceutical Indsutries” Sudhir Valia is Director in the group
112	Rushabh Enterprises	58,088/-	LR not available	Check Post stamp present on bill
164	Sainath Pneumatics and Boilers	1,54,473/-	LR not available	Bill for spare parts for Saizoner, platform for RMG2501 with railing. Delivery challan present
203	Vignesh Technosteet	1,27,296/-	LR not available	Bears Sikkim Check Post stamp for 25/12/2009 and entry stamp into SPS on 26/12/2009
246	Print Electronic Equipment	1,07,100/-	LR not available	Bill for Oasys RF with storage and in built UPS. Invoice cum delivery challan available.

4.2.11 After considering the submissions of the appellant and the observations of the AO in the remand report, I find that on the issue of duplicate bills the AO has not carried out any independent enquiry to establish that such bills pertained to machinery that had already been put to use prior to its installation in the appellant's unit. In my considered opinion, the mere fact that a particular piece of plant or machinery is supported by a duplicate bill, by itself does not prove that the said item is second hand or used. The appellant's contention that many a time the original bills are retained by the State Government Check Post authorities etc. is not without weight. The bills purchased in the prior period are seen to be pertaining to the infra structural part of the new unit and nothing has been brought on record to show that such production by the appellant, It is also seen that in most cases where the bills are duplicate or photocopies, the appellant has made other purchases from the same parties also for which original bills are available. The availability of these original bills from the same vendors indicates that the these parties were regular entities and that transactions with them were not isolated purchases. Further there is nothing to establish that the machinery evidenced by duplicate/xerox bills was second hand. Also, in relation to the bills lost due to fire at Sikkim, it is seen that the appellant has supported the explanation with the press clippings and FIR. The ledger accounts of the parties from whom the said assets were made interalia indicate receipt of goods through valid bills for which payments are made by cheques.

No enquiry was undertaken by the AO from these suppliers. As observed earlier, to my mind, simply the fact of supporting evidence existing In the form of duplicate bills, cannot lead to the conclusion that machinery was proven as old/used. In view of these facts, it cannot be concluded that the AO's computation of the value of machinery held to be old/second hand/used is based on fact. For these reasons, I find that it is not established that proportion of old machinery in Sikkim unit exceeded the stipulation of 20% as required by the Act and so the claim of the appellant cannot be on this ground.

4.2.12 The appellant has also given detailed submissions relating to the observations made by the AO in the assessment order for the succeeding year as regards the inferences drawn from the impounded papers. In the said order, the AO has noted that a 'final bill' from M/s Uksoms Engineering impounded during the survey proceedings indicates that the building in question was completed as on 31/02/2007 and therefore it can be concluded that SPI was carrying out business from the said premises from F.Y. 2007-08. In this regard, it has been submitted by the appellant that the bill in question is only for the completion of the outward structure housing the plant at Sikkim and does not in any way indicate the that commercial production had started.

It is further stated that in the pharmaceutical industry, the initial phase of setting up of the plant involves considerable civil work including the installation of the Air Handling Unit (AHU) and that commercial production requires many other types of plant and machinery. On perusal of a copy of the said bill it is seen that same is clearly relating to civil construction work inasmuch as it details work relating to excavation, filling, steel reinforcement, masonry, plaster and water-proofing work. In its submissions the appellant has continuously been stating that work relating to the Sikkim unit was initially undertaken by SPI and that it was only at a later stage that the appellant firm was brought into existence and that the plant and machinery etc. was duly assigned to the appellant firm. That being the case, civil work would have certainly begun much prior to 2009 and the fact that M/s Yuksom therein and not as evidence to show commencement of commercial production as the mere existence of an outside structure cannot by itself be taken to indicate that commercial work was going on inside it.

4.2.12 The AO has further observed that the commencement certificate issued by the Dept. of Commerce & Industries, Govt. of Sikkim was issued on 14/12/2009 and from this fact inferred that the genuineness of the certificate was doubtful since while it gave the issue of date of commencement of production as 20/04/2009, it was issued 7 months later. In this regard the appellant has stated that the impounded certificate is issued by the appropriate State Govt, department and is signed by the Asst. Director of the said Apartment and is to be accepted in total, In these proceedings it has been emphasized that the date of commercial production given in the said certificate is confirmed by other records also. A perusal of the copy of the said certificate does not indicate any overwriting etc, that may be cause for any suspicion. The office address and telephone numbers of the issuing authority are clearly mentioned on the document but other than express doubt, the AO has not made any independent enquiry to bring on record any evidence to establish that the date of commencement mentioned in the said certificate was incorrect. Thus, the fact that the certificate itself is issued at a later date cannot be considered evidence of fabrication of date of commencement of commercial production particularly when such date of commencement is supported by other documents also.

4.2.13 The third aspect highlighted in A.Y. 2011-12 by the AO as giving rise to doubt, is that key components of plant and machinery including a clit mill, blister pack machine, fluid bed dryer and blender were found to be operational on dates after 20/04/2009 i.e. after the declared date of commercial production. In this regard the appellant has stated that the machines installed after 20/04/2009 were in addition to similar plant and machinery already installed and in use and therefore production could take, place even before the additional machineries were installed during the period subsequent to April 2009. A perusal of the copies of papers relating to capitalisation of fixed assets impounded during Survey show that the fluid bed dryer, clit mill, blister pack machine, blender, dissolution tester etc. were already installed as on 20/04/2009. Thus, in view of the fact that machinery required for these functions was already installed as on date of commencement of commercial production, it cannot be held that simply because additional units of similar machinery were installed subsequently, the appellant cannot have begun commercial production on the said date.

4.2.14 The AO has also drawn support from an impounded document issued by the Commercial Tax Division, Sikkim wherein it is mentioned that environmental liability for 2.4 crores is due from Sun Pharma Sikkim for the period October 2006 to March 2011. In this regard, the appellant has stated that the said notice was issued taking into account date of beginning of factory construction and that the appellant has only paid a fraction of the demand. From a perusal of the said document I find that it is merely a show cause which has been duly replied to by the appellant and that the document itself does reflect any adverse inference drawn by the Commercial Tax Division, Sikkim.

4.2.15 The AO has further sought to draw inference from the denial of deduction u/s 80IB(4) in the case of the sister concern Sun Pharma Industries Dadra Unit and Jammu Unit for A.Y. 2004-05 and 2005-06 to support his conclusions in the case of the appellant firm, stating that while the ITAT has decided the issue, the Department has not accepted the decision and the matter is pending adjudication before the High Court. A perusal of the orders passed by the Hon'ble ITAT in the case of SPI reveals that the Tribunal considered the issues related to disallowance of deduction u/s 80IB to SPI Jammu (on similar footing as in the present case), in detail in the orders passed for A.Y. 2005-06 (dated 11.06.2010 and 07.06.2012) and orders passed subsequently in relation to A.Yrs. 2004-05, 2006-07, 2007-08, 2008-09 and 2009-10 (dated 12/06/2012). The aspect of notional disallowances in respect of selling and distribution expenses etc. was also duly adjudicated upon. Subsequent to the passing of the ITAT orders, the matter is pending in appeal before the High Court. To my mind the fact that further appeal is pending does not by itself lend greater solidity to the AO's conclusion.

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4.2.18 Therefore on close study of the case laws relied on by the AO, it is seen that the judicial pronouncements actually support the facts of the appellant's case to show that in the present case, there is no reconstruction or splitting up of an earlier existing business. The appellant's case is also further decisions discussed in Para 4.2.17. above. Thus the inescapable conclusion is that there is no splitting up or reconstruction in the case of the appellant during the year under consideration. The aspect of the old/used machinery less than the stipulated limit of 20% has already been found to be in favour of the appellant in the discussion from para 4.2.7 to para 4.2.15. That being so held, the aspect of notional disallowances made by the AO on account of royalty, selling and distribution expenses etc. is adjudicated upon in the following paragraphs”

28. Thus CIT(Appeals) after discussing the decisions relied upon by the Assessing

Officer for construing the meaning of old plant and machinery and how it has to infer that the assessee has used old plant and machinery, arrived at finding of fact that there was no splitting up or reconstruction in the case of the appellant during the year under consideration and the aspect of old/used machinery being less than the stipulated limit of 20% was also not emerging from the record. The Tribunal after considering the findings of fact arrived at by the CIT(Appeals) held that the assessee was entitled to deduction under section 80IE of the Act by observing as under:

> "26. We have duly considered rival contentions and gone through the details. According to the AO, bills having value of Rs.6.88 crores with regard to certain additions to plant & machinery were not furnished. Therefore, he presumed such machinery as second-hand machinery. Against his presumption, the assessee has filed an application for permission to adduce additional evidence. It was contended therein that questionnaire issued on

12.11.2012; bills were lying at factory premises in Sikkim; staff was not well conversant with income tax proceedings; they were lying in boxes; hence in a short span of time, complete details could not be submitted. Thereafter, the assessee produced complete details. The remand report was called for by the ld. CIT(A) on those details. In the remand proceedings, each bill was analysed and objection of the AO were noted. The bills have been discussed by the CIT(A) and the details are available in tabular form extracted (supra). We also have perused such details and are of the view that the defects are not substantive. They have only shown that some of the bills are photo-copies, LRs are not available etc. The ld. CIT(A) while considering these defects observed that the AO should have made an inquiry from the original suppliers and when such machineries were supplied. He did not make any inquiry rather presumed certain facts that machineries are old one. In the finding recorded by the first appellate authority extracted (supra) reveals detailed analysis and a finding of fact that total machinery having value of Rs.14.98 crore considered by the AO as representing old was not sustainable. Therefore, after going through the detailed analysis made by the ld. CIT(A) we are of the view that Revenue failed to demonstrate that machineries exceeding 20% of the total value of the plant &

> machinery were old machinery. Therefore, considering the facts on this fold of grievance of the Revenue, we do not find any error in the order of the ld. CIT(A). Assessee is entitled for deduction under section 80IE of the Act.”

29. In view of above concurrent findings of fact arrived at by the CIT(Appeals) and the Tribunal and in absence of any inquiry made by the Assessing Officer from the original supplier regarding the date of supply of the machinery, the presumption made by the Assessing Officer that the machineries are old one have been rightly discarded by the CIT(Appeals) by detailed analysis and finding of fact that total machinery having value of Rs.14.98 crore considered by the Assessing Officer as representing old machinery was not sustainable.

30. We do not find any infirmity in the impugned order of the Tribunal so as to give rise to any substantial question of law and

accordingly, question No.(A) and (B) in Tax Appeal No.183 of 2020 and Question No.(A) and (C) in Tax Appeal No.184 of 2020 are not admitted.

31. Question Nos. (C),(D),(E),(F),(G) and (H) in Tax Appeal No.183 of 2020 and Question Nos. (D),(E),(F),(G), (H) and (I) in Tax Appeal No.184 of 2020 are concerned, the same relates to the allocation of various expenditures to the assessee from the account of SPIL reducing the eligible profit for computation of deduction under section 80IE of the Act.

32. Insofar as deletion of the disallowance of deduction under section 80IE(6) read with section 80IA(10) on various expenses are concerned, same pertains to the quantification of eligible profit on which deduction under section 80IE is to be

granted. The assessee had shown Net Profit at 76.46% for Assessment year 2010-2011. The Assessing Officer therefore, started to inquire whether the case of the assessee falls within the ambit of section 80IA(10) of the Act and its profit for grant of deduction under section 80IE deserves to be determined at reasonable basis. Section 80IE(6) and section 80IA(10) of the Act read as under:

> **Section 801E(6):**
>
> (6) The provisions contained in sub-section (5) and sub-sections
>
> (7) to (12) of section 80-IA shall, so far as may be, apply to the eligible undertaking under this section.
>
> **Section 801A(10):**
>
> (10) Where it appears to the Assessing Officer that, owing to the close connection between the assessee carrying on the eligible business to which this section applies and any other person, or for any other reason, the course of business between them is so arranged that the business transacted between them produces to the assessee more

than the ordinary profits which might be expected to arise in such eligible business, the Assessing Officer shall, in computing the profits and gains of such eligible business for the purposes of the deduction under this section, take the amount of profits as may be reasonably deemed to have been derived therefrom:

Provided that in case the aforesaid arrangement involves a specified domestic transaction referred to in section 92BA, the amount of profits from such transaction shall be determined having regard to arm's length price as defined in clause (ii) of section 92F.”

33. On Conjoint reading of both the provisions, it is clear that the provisions contained in sub-section (5) and sub-sections (7) to (12) of section 80IA shall so far as may be, apply to the eligible undertaking would be applicable to the undertaking claiming deduction under section 80IE of the Act. Therefore, provision of section 80IA(10) will be applicable for the purpose of computing deduction under section 80IE of the Act. Section 80IA(10) of the Act stipulates

that if on analysis of the record, it is revealed to the Assessing Officer that on account of close connection between the assessee carrying on the eligible business to which this section applies and any other person or for any other reason, the course of business between them is so arranged that the business transacted between them produces to the assessee more than the ordinary profits, then the Assessing Officer would reasonably take the profit on the basis of the relevant factors.

34. Thus, the provision of section 80IA(10) empowers the Assessing Officer to re-estimate the profit of the eligible units and thereafter compute the deduction if the assessee who is eligible for deduction under Chapter-VIA has close connection with other person or for any other reasons, demonstrating the facts that they have

arranged their affairs in such a manner which is resulting in extra profit to the assessee eligible for deduction under Chapter VI-A.

35. The expression "the course of business between them is so arranged that the business transacted between them produces to assessee more than the ordinary profits" would indicate that there should be undisputed facts on the record which demonstrates and indicate that the arrangement which resulted extra profit to the assessee, who is eligible for deduction under Chapter-VIA.

36. By referring to the provisions of section 80IE(6) read with section 80IE(10) of the Act, the Assessing Officer has reduced the apportionment of sales and distribution expenses, research and development expenditure, royalty fees, managerial fees, central excise duty incentive and

remuneration to the working partner which were alleged to have been incurred by SPIL on behalf of the assessee and claimed by SPIL as per the presumption of the Assessing Officer. The Assessing Officer has calculated the expenses allowable to each entity on the basis of their turnover by allocating expenses to each unit on the basis of turnover and thereby reducing the eligible profit of the assessee by way of apportionment of expenditure.

37. The Tribunal after considering the order of CIT(Appeals) under each head dismissed each ground raised by the Revenue by upholding the findings arrived at by the CIT(Appeals) as under:

> **Selling and Distribution Expenses:**
> "31. The AO was of the view that the assessee has turnover of Rs.624 crores. Its expenditure are in the ratio of turnover is 21% qua selling and distribution of the products. It has debited expenditure of Rs.9.4

crores only, whereas, it should have debited expenditure at Rs.44.27 crores. In this very manner, he has calculated the expenditure by SPI and made allocation. A perusal of the assessment order would indicate that he has basically used two information for harbouring a belief that affairs being arranged in such a manner which has resulted unreasonable profit to the assessee. The first evidence used by the ld.AO is the statement of Shri Sanjay Sahai, GM (Strategic Marketing & Research of SPIL) who is partner of the assessee. Thereafter he made reference to the statement of Kalyana Sundaram, CEO of SPIL, carrying out sales & marketing and formulation activities. On the basis of these two statements recorded during the course of survey carried out at the premises of SPIL, he formed an opinion that these two senior managerial fellows have admitted that SPIL was expanding selling and distribution facility as well as R&D facilities for the assessee. In second circumstances, he has considered profit ratio shown by the assessee vis-à-vis SPIL. He made allocation of expenditure debited by the SPIL towards selling and R&D and such expenditure were allocated to the assessee which has reduced the profit. When this dispute went to the CIT(A), the ld. CIT(A) did not concur with the AO. Similarly, in the case of SPI, ITAT Amristar Bench did not concur with the AO and did not approve these adjustments. The finding of the ld. CIT(A) impugned herein on both these counts deserve to be noted, which read as under:

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32. The question is, whether the AO was possessing sufficient evidence to demonstrate that on account of close connection between the assessee and SPIL they have arranged their affairs in such a manner which has resulted unreasonable profit to the assessee. As far as close connection is concerned, there is no dispute because SPIL is a working partner and having more than 97.5% shares. Thus, close connection is there. Reference to statement of Kalyana Sundaram and Sanjay Sahai are concerned, they were recorded under section 133A of the Act during the course of survey without oath. We have been informed that subsequently the statements were retracted. Decision of TAX Hon'ble Kerala High Court in the case of Paul Mathews and Sons Vs. CIT, 263 ITR 101 (Ker) was brought to our notice. Similarly, proposition laid down in this decision was approved by Hon'ble Apex Court in the case of CIT Vs. S. Khadar Khan & Sons, 25 taxmann.com 413 wherein the Hon'ble Supreme Court has upheld decision of Hon'ble Madras High Court which has referred judgment of Hon'ble Kerala High Court. In both these cases, it has been propounded that section 133A authorizes survey team to

record statement, but such authorization is for recording of statement without administering an oath and statement recorded without oath has just a corroborative value as information. It is not an evidence per se. In the present case, these statements are general in nature highlighting the business operandi of a group as a whole. While appreciating some of the question, one has to keep in mind, the turnover of three concerns of group at Rs.3011 crores. The accounts of the assessee are audited. No defects were found from the accounts by the AO. There might have been various strategic decisions at the HQ level, which is looking after the different entities of the group as a whole. So on the basis of general statement, it could not be harboured that exactly what expenditures of the assessee, were being borne by its working partner. The second circumstance referred by the AO is a comparable study from SPIL while considering the profit earned by the assessee vis-à-vis ratio of expenditure incurred by it. It is pertinent to observe that the assessee is in the business of manufacturing and sale of pharmaceuticals, drugs/medicines. Some of the drugs were manufactured as bulk drugs. The AO should have found it, who were selling agents or what is the marketing network through whom the assessee has made sales. Even if it has used the network of its working partner, then how the sales have been effected through that network. The assessee has debited expenditure of Rs.9.4 crors. One can appreciate that if there were only few parties, through them sales were made, then looking into that network and the expenses debited by the assessee, can it be assumed that such a sale target could not be achieved on an incurrence of Rs.9.5 crores. Let us be more specific. If an assessee sells hundred items produced by it, and those hundred items are being sold through four-five distributors. In other cases, an assessee is manufacturing 500 items, and selling its products through a number of distributions at micro level, their ratio of expenses would be totally different. The entity which is selling its products through four-five distributions would eventually incur less expenditure than the entities which is selling its products at micro level through large number of agents. It will end up incurring more expenditure. Thus, the angle of inquiry at the end of the AO should have been verification of distribution network, and thereafter to find out whether Rs.9.5 crores is sufficient amount to achieve sale target of Rs.624 cores. The AO has simply assumed existence of arrangement between the SPIL and the assessee, whereas, he appreciated the profit ratio shown by the assessee. He has not made reference to any evidence demonstrating such arrangement. He simply compared the expenses incurred by SPIL in the ratio of its turnover, and then assumed that expenses incurred by the assessee are on the lower side. Only evidence, he referred is the statement of two senior managerial officers recorded during the course of survey. Similarly, adjustment made in the case of SPI was not approved upto the level of ITAT, Amristar Bench. Therefore, we are of view that the ld. CIT(A) has appreciated the facts in right perspective and rightly rejected existence of any arrangement, on the basis of which, it could be assumed that unreasonable profit has been resulted to the assessee.

Research and Development expenses and Royalty expenses

33. The facts with regard to other items, i.e. Research and Development expenses, Royalty and trademark, brand, logo use, managerial fees are also identical. We have already taken note of the CIT(A)'s finding. The ld. CIT(A) while appreciating the concern of the AO has recorded a finding that the ld.AO failed to take into account the facts that drugs being manufactured by the assessee did not enjoy high brand value, but were prescription drugs where the quality was more important than the brand recall. According to the CIT(A), the AO has also disregarded the order passed by the ITAT, Amristar Bench, which has deleted such apportionment of

expenditure in the case of SPI. Hence, the issue has been considered as covered by the order of the ITAT cited supra.

34. Next item which has been reduced from the eligible profit is an amount of Rs.48.40 crores. The AO was of the opinion that the assessee has used trademark, brand and logo of SPIL, therefore it should have paid royalty or any other charges to SPIL. He has estimated 8% of the turnover which ought to have been paid by the assessee to SPIL. This 8% has been estimated by the AO on the basis of his view taken in the case of SPI in the assessment years 2004-05 to 2010-11. The stand of the assessee before the Revenue authorities was that on the basis of supplementary partnership deed, SPIL has been given remuneration at the rate of 0.5% of the turnover. This mechanism has been provided as per supplementary deed. SPIL is a major working partner, who has provided all these facilities to the assessee, and remuneration at 5% of the turnover has been provided. This aspect has been considered by us as well as by the CIT(A) while considering the issues under the head Research and Development. In the case of SPI, this estimation of expenses under the head royalty at 8% of the turnover was deleted. We find that in the present appeals also ld. CIT(A) relied upon orders of the ITAT, Amristar Bench in ITA Nos.345, 346, 13, 129 & 130 and ITA

No.391, 392, 18, 107 & 312. Copies of these orders have been placed in the paper book by the ld. counsel for the assessee. The finding of the Id. CIT(A) in this regard recorded in para 4.6.2 is worth to note, which reads as under:

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35. After going through the above finding, we do not find any merit in this ground of appeal. We do not have any reason to deviate ourselves from the finding recorded by the ITAT, Amristar Bench which has been followed by the CIT(A). There is no justification at the end of the AO to estimate 8% of the turnover as fee required to be paid for use of logo, trademark etc. The assessee has already paid 5% of turnover as remuneration to SPIL for extending facility, sale and distribution, R&D, use of logo etc. Therefore, we do not find any reason to interfere in the finding of the ld.CIT(A) on this issue.

Management fee expenses

36. In the next ground, grievance of the Revenue is that the AO has reduced the eligible profit by a sum of Rs.12,11,15,682/- which was allowed to be payable to SPIL on account of management fee expenses. These expenses have been estimated by the AO at 2% of the turnover. He was of the view that since SPIL has provided consultancy, management and on other aspects, and therefore, the

assessee should have paid fees to SPIL. Its profit are required to be reduced by 2% of the turnover on account of such expenditure. On appeal, the ld. CIT(A) did not approve this view point of the AO, basically, for the reasons that this disallowance has been made on the basis of finding recorded in the case of SPI and that finding did not meet approval of ITAT in the case of SPI.

37. Before us, the ld. counsel for the assessee relied upon the orders of the ITAT, Amristar Bench and Mumbai Bench and submitted that the assessee has already paid remuneration at 5% of the turnover which has been accounted in the accounts. No further adjustment was required. This stand of the assessee in the case of SPI has been approved. We find that the finding of the CIT(A) is on this line, and we do not see any reason to deviate from the order of the ITAT, Amristar Bench on this issue. Therefore, we do not find any merit in the contention of the Revenue, and view taken by the CIT(A) is being upheld.

Central Excise Duty Incentive
38. In the next ground of appeal, grievance of the Revenue is that the ld. CIT(A) has erred in deleting the disallowance of deduction under section 80IE read with section 801A(10) of the Act on central excise duty incentive of Rs.12,75,65,446/- by putting

reliance upon order of the Hon'ble Jammu and Kashmir High Court followed by the ITAT in the case of sister concern of the assessee firm.

39. Brief facts of the case are that during the course of assessment proceedings, the AO noted that in the case of SPI the excise duty self-credit taken/collected and/or not paid being an incentive as per government policy applicable in Jammu & Kashmir. He taxed the above amount and held that it was not being derived from the profits of the industrial undertaking. The stand of the assessee is that it had not received any refund whatsoever from the central excise department, but was eligible for self-credit in respect of central excise duty paid on raw-material, packing material etc. It also submitted that incident of excise duty arose in the manufacture and if there were no manufacture then there would be no question of levy of excise duty. The assessee relied upon the judgment of Hon'ble Jammu & Kashmir in the case of Shri Balaji Alloys & Ors. Vs. CIT, 333 ITR 335. It was pointed out by the ld.counsel for the assessee that this judgment has been upheld by the Hon'ble Supreme Court. Appeal of the Department has been dismissed. He placed on record copy of Hon'ble Supreme Court decision reported in 80 taxmann.com 239; 287 CTR 459. The ld. CIT(A) has recorded the following finding on this issue:

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40. With the assistance of the ld. represenatives, we have gone through the record carefully. The AO has based his finding on the assessment order passed in the case of sister concern i.e. Sun Pharma Similar amount was taxed in the case of Sun Pharma Industries and dispute travelled upto the ITAT, Amristar. The ITAT has decided the issue in favour of the assessee. We have gone through the judgment of Hon'ble Jammu & Kashmir High Court. We deem it appropriate to take note of the following finding:

> “27. Thus, looking to the purpose of eradication of the social industrial development and removing backwardness of the area that lagged behind in Industrial development, which is certainly a purpose in the Public Interest, the incentives provided by the Office Memorandum and statutory notifications issued in this behalf, to the appellants-assessees, cannot be construed as mere Production and Trade Incentives, as held by the Tribunal.
>
> 28. Making of additional provision in the Scheme that incentives would become available to the industrial units, entitled thereto, from the date of commencement of the

commercial production, and that these were not required for creation of New Assets cannot be viewed in isolation, to treat the incentives as production incentives, as held by the Tribunal, for the measure so taken, appears to have been intended to ensure that the incentives were made available only to the bona fide Industrial Units so that larger Public Interest of dealing with unemployment in the State, as Intended, in terms of the Office Memorandum, was achieved.

29. The other factors, which had weighed with the Tribunal in a15etermining the incentives as Production Incentives may not be decisive to determine the character of the incentive subsidies, when it is found, as demonstrated in the Office Memorandum, amendment introduced thereto and the statutory notification too that the incentives were provided with the object of creating avenues for Perpetual Employment, to eradicate the social problem of unemployment in the State by accelerated industrial development.

30. For all what has been said above, the finding of the Tribunal on the first issue that the Excise Duty Refund, Interest

Subsidy and Insurance Subsidy were Production Incentives, hence revenue Receipt, cannot be sustained, being against the law laid down by Hon'ble Supreme Court of India in Sahney Steel & Press Works Ltd.'s case (supra) and Ponni Sugars & Chemicals Ltd.'s case (supra).

31. The finding of the Tribunal that the incentives were Revenue of Receipt is, accordingly, set aside holding the incentives to be Capital Receipt in the hands of the assessees.

32. In view of our above finding on the first issue, there is p need to opine on the second issue, which was raised in the alternative.

33. These Appeals, therefore, succeed and are, accordingly, allowed setting aside the orders impugned in the Appeals, made by the Income-tax Appellate Tribunal, Amritsar Bench, Amritsar on the appellants' Appeals.”

41. Hon'ble High Court has held that the incentive were to be treated as capital receipt. The moment it became capital receipt then it will be excluded from taxable income of the assessee, and if it is excluded from taxable income then, it cannot be formed part of eligible profit u/

s.80IE. But the net result is that it is tax neutral because if it is considered as revenue receipt and thereafter 100% deduction is granted u/s.80IE then also tax impact is NIL. Therefore, after considering the judgment of Hon'ble J&K High Court who considered the same excise incentive policy, we direct the AO to treat this receipt as capital receipt and exclude them from computation of total income for taxation purpose as well as for 80IE purpose. This ground is dispose off.

Remuneration to working partner

42 In the next ground of appeal, grievance of the Revenue is that the ld. CIT (A) has erred in deleting the disallowance of deduction under section 801E(6) r.w.s. 80IA(10) on remuneration to working partner amounting to Rs.29,02,26,973/-.

43. Brief facts of the case are that the assessee has executed a supplementary partnership deed on 15.3.2012 whereby it has provided that remuneration to the working partner, SPIL would be granted at 5% of the turnover. The assessee has debited this amount to an allowable expenditure and reduced it from deduction admissible under section 80IE. The ld.AO has disallowed the claim of expenditure and added back to this to the total income of the assessee. He further disallowed deduction admissible to the assessee

on this amount. The ld. CIT(A) has deleted this disallowance for two reasons. She observed that the supplementary deed was a contract amongst the partners to decide the terms either prospective or retrospective. Therefore, remuneration to the partners cannot be disallowed by the AO with help of section 40b of the Act. Explanation 4 to section 40b talks of working partner to whom remuneration can be paid. Apart from the above, ld. CIT(A) further observed that in a revised return assessee itself disallowed this expenditure suo moto. Once this amount has been added back, then the AO is not justified to add back it again. The finding of the Id. CIT(A) in para 4.10.2 reads as under:

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44. After going through the above finding we do not find any reason to interfere in this ground of appeal. It is rejected."

38. Thereafter for Assessment Year 2011-2012, the Tribunal has observed as under:

"45. As far as assessment year 2011-12 is concerned, all the issues are on the similar line except variation in the quantum. The Id. CIT(A) either followed order of her predecessor in the Asstt. Year 2010-11 or ITAT, Amristar Bench. She has basically reproduced the finding of the CIT(A) on each item recorded in the Asstt. Year 2010-11. Thus, finding no disparity on facts, we do not find any merit in any of the grounds in the Asstt. Year 2011-12 also.”

39. In view of the concurrent findings of fact recorded by the Thribunal, we are of the opinion that no interference is called for in the impugned order of the Tribunal insofar as Question Nos. (C),(D),(E),(F),(G) and (H) in Tax Appeal No.183 of 2020 and Question Nos. (D),(E),(F),(G), (H) and (I) in Tax Appeal No.184 of 2020 are concerned.

40. In view of our findings to Question Nos. (C),(D),(E),(F),(G) and (H) in Tax Appeal No.183 of 2020 and Question Nos. (D),(E),(F),(G), (H) and (I) in Tax Appeal No.184 of 2020, question (B) in Tax Appeal No.184 of 2020 with regard to reduction of books of account would not survive and we decline to

answer the same.

41. Both the appeals are accordingly dismissed.

(BHARGAV D. KARIA, J)

(PRANAV TRIVEDI,J)

RAGHUNATH R NAIR