IN THE HIGH COURT AT CALCUTTA

SPECIAL JURISDICTION (Income Tax)
(Original Side)

Reserved on : 04.02.2026.

Pronounced on : 21.04.2026

ITA 407 OF 2008

. M/S. GRAPHITE INDIA LTD.

…Appellant

-VS-

COMMISSIONER OF INCOME TAX - IV, KOLKATA.

….Respondent

Present:-

Mr. J. P. Khaitan, Sr. Adv.
Mr. Somak Basu, Adv.
Mr. Swagato Kabiraj, Adv.

…for the appellant

Mr. Aryak Datt, Adv.
Mr. Madhu Jana, Adv.

….. for the Respondent

Coram: THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
And
THE HON'BLE JUSTICE UDAY KUMAR

Rajarshi Bharadwaj, J:

1. The appellant/petitioner has filed this appeal under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), challenging the order dated January 10, 2008 passed by the Learned Income Tax Appellate Tribunal

(ITAT), Kolkata Bench "B", for the assessment year AY 2002-03, on the substantial questions of law formulated at the time of admission.

2. The facts in a nutshell are that the assessee, a company under the Companies Act, 1956, with its registered office at 31, Chowringhee Road, Kolkata, manufactures and sells graphite electrodes and calcined petroleum coke, while also generating power through three units (PU-I, PU-II hydel, PU-III) at Bangalore and Nashik, mostly for captive use by its electrode division. For AY 2002-03, it claimed Rs. 35,65,09,296 deduction u/s 80-IA on power profits, computed via transfer pricing at KSEB/MSEB purchase rates as per section 80-IA(8) and export profits under section 80HHC on electrode exports, without reducing 80-IA profits, treating 80HHC as self-contained. It excluded sales tax remission subsidy (Rs. 70,45,931) as capital receipts, 100% export profits from MAT book profits u/s 115JBand capital profits from fixed assets/investments sales.

3. The Assessing Officer disallowed the assessee computation of transfer price for captively consumed power at full KSEB/MSEB purchase rates, instead of adopting rates from third-party sales. The AO also reduced the profits eligible for deduction under section 80HHC by the amount of section 80-IA profits as per section 80-IA(9), treated the sales tax remission subsidy as revenue receipt, permitted exclusion of only 70% of export profits from book profits under section 115JB citing sub-section (1B) of section 80HHC and included capital profits from sale of fixed assets and investments in book profits.

4. On appeal, the CIT(A) partially allowed the transfer pricing claim by permitting KSEB/MSEB rates minus the electricity duty component, but upheld all other adjustments made by the AO. Being aggrieved, the assessee preferred an appeal under section 260A, contesting Tribunal errors on market value, double deduction, subsidy nature and book profit exclusions

5. Learned counsel appearing for the appellant raises the issue on the following substantial questions of law that have been admitted:

a. *Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in holding that, for the purpose of quantifying the deduction under section 80-IA of the Act, the transfer price of power had to be computed without taking into account the electricity duty component included in the sale price charged by KSEB and MSEB?*

6. We have heard learned Counsel for the appellant/petitioner as well as for the respondent at length. Since the issues involved are pure questions of law and have been settled by binding precedents of the Hon'ble Supreme Court and this Court, we proceed to decide the appeal on merits.

7. Firstly, the assessee is engaged in the manufacture and sale of graphite electrodes and calcined petroleum coke and also in the generation of power through its captive power undertakings at Bangalore and Nashik. The electricity so generated is largely consumed captively by its manufacturing divisions. For the purpose of computing deduction under Section 80-IA, the assessee adopted the transfer price as the rate at which electricity was purchased from the Karnataka State Electricity Board (KSEB) and the Maharashtra State Electricity Board (MSEB), in terms of Section 80-IA(8), treating the same as the "market value".

8. The Assessing Officer, though accepting the SEB tariff as the basis, excluded the electricity duty component embedded in such tariff on the ground that no such duty was payable in respect of captive consumption. This view has been affirmed by the Tribunal.

9. The controversy is no longer res integra. The Supreme Court in ***CIT v. Jindal Steel and Power Ltd.*** **(460 ITR 162)** has held that for the purposes of Section 80-IA, the market value of electricity supplied by a captive unit must be determined with reference to the rate at which the State Electricity Board supplies electricity to industrial consumers in an open market. The Court clarified that such consumer tariff constitutes the appropriate benchmark and not any notional or truncated rate.

10. A similar view was taken by the Calcutta High Court in ***CIT v. ITC Ltd. (236 Taxman 612)***, subsequently affirmed by the Supreme Court, wherein it was held that the SEB tariff payable by industrial consumers represents the open market value contemplated under Section 80-IA(8).

"The market value... should be computed by considering the rate at which the State Electricity Board supplied power to the consumers in the open market..." and "the rate at which the State Electricity Board supplied power to the industrial consumers has to be taken as the market value for computing deduction under section 80-IA"

11. The tariff payable to SEBs is a composite price and includes statutory levies such as electricity duty. Once the statute requires adoption of the price that electricity would ordinarily fetch in the open market, it is impermissible to artificially exclude components forming an integral part of such price.

12. The Tribunal, therefore, erred in directing exclusion of the electricity duty component while computing the transfer price. We accordingly answer substantial question (a) in the negative, i.e., in favour of the assessee and against the revenue.

b. Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in holding that deduction allowed u/s 80IA of the Act needs to be reduced while computing Profits of the Business eligible for deduction u/s 80HHC of the Act?

13. Secondly, the assessee carries on distinct activities such as generation of power through independent undertakings eligible for deduction under Section 80-IA and manufacture and export of graphite electrodes, eligible for deduction under Section 80HHC. It is not in dispute that the power undertakings are separate units maintaining independent accounts and are not engaged in export activity. Likewise, the export division has not claimed any deduction under Section 80-IA. The Assessing Officer reduced the business profits eligible under Section 80HHC by invoking Section 80-IA(9). The Tribunal affirmed such reduction relying on earlier orders. The interpretation adopted by the Tribunal

cannot be sustained in view of subsequent judicial pronouncements. The deduction granted under Section 80-IA cannot be reduced while computing profits eligible for deduction under Section 80HHC where the deductions arise from independent businesses. The Supreme Court in ***Shital Fibers Ltd. v. CIT (376 ITR 309)*** has explained that Section 80-IA(9) is intended only to prevent double deduction in respect of the same profits and does not authorize reduction where the deductions relate to different sources of income. Similarly, the Gujarat High Court in ***CIT v. Shah Alloys Ltd. (335 ITR 210)*** held that profits of an eligible power undertaking cannot be reduced while computing deduction under Section 80HHC when there is no overlap of income. In the present case, the profits derived from generation of power are not export profits at all and are not eligible for deduction under Section 80HHC. Hence, there arise no question of double deduction. We accordingly, answer substantial question (b) in the negative, i.e., in favour of the assessee and against the revenue.

c. *Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that incentive/subsidy received by the appellant in the form of remission of sales tax is not capital but revenue in nature although the said subsidy is granted for expansion of the unit located in backward area and is directly related to investment of fixed capital and hence is not chargeable to tax under the provisions of Income Tax Act, 1961?*

14. Thirdly, the assessee received sales-tax remission under the West Bengal Incentive Scheme, 1993, which was granted to encourage expansion and modernization of industrial units located in backward areas and was directly linked to investment in fixed capital.

15. The nature of such subsidy must be determined by applying the well-settled "purpose test". In **CIT v. Ponni Sugars and Chemicals Ltd. (306 ITR 392)**, the Supreme Court held that where the object of the subsidy is to enable setting up or expansion of an industrial unit, the receipt is capital in nature irrespective of the mechanism through which it is granted. The principle was

reiterated in **CIT v. Shree Balaji Alloys (333 ITR 335),** where incentives aimed at promoting industrialization in backward regions were held to be capital receipts. This Court in ***PCIT v. Ankit Metal & Power Ltd.*** **(416 ITR 591)** applied the aforesaid test and held that subsidies linked to capital investment for industrial development cannot be treated as revenue receipts.

16. A perusal of the West Bengal Incentive Scheme, 1993 clearly demonstrates that the remission was intended to induce fresh capital investment and expansion of industrial capacity. It was not a subsidy to assist the assessee in carrying on its trade more profitably.

17. The Tribunal, therefore, erred in treating the said subsidy as revenue in nature. We accordingly answer substantial question (c) in the negative, i.e., in favour of the assessee and against the revenue.

d. Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that sales tax incentive received by the appellant cannot be excluded in computing Book Profits computed u/s 115JB of the Act?

18. Lastly, once the subsidy is held to be capital in nature, the further question is whether it forms part of book profit under Section 115JB.

19. The Supreme Court in ***Apollo Tyres Ltd. v. CIT*** **(255 ITR 273)** held that while computing book profit under the MAT provisions, the Assessing Officer cannot make adjustments other than those specifically provided in the statute. Following the purpose test, the Court in ***Ankit Metal & Power Ltd. (supra)*** held that capital subsidies intended for industrial development do not partake the character of income and must be excluded from computation of book profit under Section 115JB.The character of the receipt does not change merely because it is routed through the profit and loss account. As held in ***Sahney Steel & Press Works Ltd. v. CIT (228 ITR 253)*** and reaffirmed in ***Ponni Sugars (supra)***, the object of the subsidy determines its nature.

20. Accordingly, the sales-tax remission, being capital in nature, could not have been included in the computation of book profit. We accordingly answer substantial question (d) in the negative, i.e., in favour of the assessee and against the revenue.

21. For the foregoing reasons, the appeal under Section 260A is allowed in favour of the assessee across all substantial questions of law.

22. Urgent certified copy, if applied for, be supplied upon compliance with requisite formalities.

(RAJARSHI BHARADWAJ, J)

(UDAY KUMAR , J)

Kolkata

21.04.*2026*
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