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Daily Tax News (DTN) is a special email service from Tuesday to Friday, part of your subscription, aims at keeping you informed about changes taking place in tax laws in real time. It also contains in-depth articles, analyses and changes taking place all over the world. On Saturday evening we send Weekly Tax Journal (WTJ) online which you can read till Monday at your convenience

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Kind regards

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Govt likely to reduce turnover,withholding taxes for steel sector

The federal government is likely to reduce the turnover tax and withholding tax for the steel sector to 0.5 percent and one percent from one percent and 3.5 percent, respectively, through a special statuary notification for the steel industry, sources said on Wednesday.

The sources said that the steel industry is in negotiations with the Federal Board of Revenue (FBR) and the Finance Department for the last one-year and asking to bring down these two taxes, which were four to five times higher than their per metric ton profit margins.

The government departments after consultation with the steel sector stakeholders has accepted their longstanding demand to lower down the turnover tax and withholding tax, which would be implemented soon after issuance of the SRO, the sources said.

An official engaged in the consultation process told The News that argument of the steel sector was justifying as it was the huge turnover industry against others.

After calculation, it has also been admitted that their profit margins are also not much high on per metric ton of the finished product, they said, adding that in such a scenario, the steel sector traders have succeeded to convince the finance department and the FBR and finance minister has approved to bring down these two taxes.

The SRO is likely to issue before the federal budget, while some revised rate of sales tax would be imposed in the budget too, he said.

Asmat Pervaiz, former chairman of All Pakistan Steel Re-Rolling Mills Association, said that the steel furnaces and re-rolling industry is paying almost Rs3,000 per ton taxes in the tune of one percent turnover and 3.5 percent withholding tax, while profit margins were not more than Rs400 per ton.

If the price of one metric ton iron bar is Rs60,000 than the producer was paying Rs600 turnover tax and Rs2,100 withholding tax.

We are asking the government to reduce it as it is not justifying with the steel sector, which has already struggling hard to cope with the energy crisis," he said, adding that now the federal government has, in principle, agreed to fixed it at 0.5 percent and one percent turnover and withholding taxes, respectively.

"The formula of cost of production has already made by the government with the consultation of the steel industry in which one ton production has been made against every 130 units electricity consumed by the furnaces," said Asmat.

Now once the SRO would be issued the irrelevant cost of taxes would be reduced, he said, adding that for instance, if the cost of raw material would be Rs55,000 per ton than the one percent withholding tax would be Rs550 and 0.5 percent turnover tax would be Rs275. Thus, the taxes would come in the range of Rs800 per ton, he added. – *Courtesy The News*

FBR sends audit notices before year-end

Even though the financial year has not ended as yet, Federal Board of Revenue (FBR) has sent audit notices to textile exporters this month, said one exporter.

Chief Coordinator, Pakistan Hosiery Manufacturers and Exporters Association, M Jawed Bilwani said on Wednesday that audits of their member exporters are complete for the period up to 30 June 2011 and audit certificates have been issued to them but, nevertheless, FBR has been directing for audit of their members in May.

Bilwani said the refund amount involved is 0.8 percent to 1.5 percent of the total export value for packing materials; and the audit exercise is for a paltry amount.

Their member exporters, he said, are zero rated for the utilities and file their returns every month.

It is an irony that such small exporters- whose refund amount is between Rs5000 to Rs10,000 per month, and hence they do not bother to get their refund- are also being sent such audit notices. "When such small exporters do not take any refund then what is the point for their audit," he asked.

There has already been a 25 percent decline in exports and the exporters are burdened and facing great difficulties due to 24 federal and provincial agencies' bothering them, besides continuous load shedding which resulted in the severest ever liquidity crunch, he said.

In the current global scenario and international competition, exporters are struggling hard to meet their export commitments with stringent demands from their foreign buyers but unfortunately it seemed that the government does not care at all, he added. – *Courtesy The News*

FED on five different kinds of oils to be abolished

The government has decided to abolish federal excise duty (FED) on 5-6 different kinds of oils in budget (2012-13), reducing the total number of excisable commodities from 21 to 16 next fiscal year onwards.

Sources told here on Wednesday that the FED would be totally abolished on five different kinds of oils covering lubricating oil in packs; Base Lube Oil, lubricating oil manufactured from reclaimed oil or sludge or sediment, lubricating oil in bulk, lubricating oil manufactured from sludge and lubricating oil manufactured from sediment.

The proposed withdrawal of excise duty on various kinds of oils would cause revenue loss to the tune of billions.

However, abolition of duty would provide a major relief to the business community as well as general masses in budget.

In this connection, the Finance Bill (2012-13) is expected to propose amendment in the Table-I (excisable goods) of the First Schedule of the Federal Excise Act 2005 to reduce the number of excisable commodities in the coming budget.

Except these 5-6 kinds of oils, the excise duty would be retained in the remaining items mentioned in the Table-I of the First Schedule of the Federal Excise Act, 2005.

According to sources, at present the FED is applicable on the lubricating oil in packs not exceeding 10 liters; lubricating oil in packs exceeding 10 liters and lubricating oil manufactured from reclaimed oils or sludge or sediment.

This is subject to the condition if sold in retail packing or under brand names the words manufactured from reclaimed oil or sludge or sediment should be clearly printed on the pack.

The proposed amendment in the Table-I of the First Schedule of the Federal Excise Act 2005 would remove these kinds of oil from the FED regime in budget (2012-13).

In budget (2011-12), the excise duty was abolished on solvent oil, other fuel oil, mineral greases, transformer oil, other mineral oils excluding sewing machine oil, waste oil, carbon black oil (carbon black feed stock) including residue carbon oil, methyl tertiary butyle ether (MBTE), greases, organic composite solvents and thinners, viscose staple fibre, motor cars and other motor vehicles.

The policy of abolition of the FED on oils would continue in coming budget (2012-2013).

Keeping in view this policy, the FED on the remaining oils would be abolished from next fiscal.

Under the government plan to phase-out the FED regime, out of 46 items subjected to the FED, the FBR had abolished the FED on 15 items in last budget.

In budget (2012-13), the number of items would be further reduced from 31 items to 16.

The gradual phasing out of the excise duty would continue in the next two budgets for complete abolition of the excise regime in future.

Sources added that the government would also gradually phase out Federal Excise Duty (FED) on cement and beverages sectors in the next budget (2012-13) in line with its commitment to the two sectors in fiscal year 2011-12.

In the last budget, the FED on beverages was reduced from 12 percent to 6 percent with the commitment that the remaining 6 percent would be abolished in 2012-13.

Similarly, the government had reduced the FED on cement from Rs 700 per metric ton to Rs 500 per metric ton. – *Courtesy Business Recorder*

Defaulting withholding agents: two time-bound amnesty schemes announced

The Federal Board of Revenue has announced two time-bound amnesty schemes for the defaulting withholding agents and claimants of inadmissible input tax credit, adjustment/refund to avail exemption from default surcharge and penalty on payment of due amount of tax and outstanding principal amount of sales tax/federal excise duty respectively by May 31, 2012.

In this connection, the FBR has issued two notifications ie S.R.O. 547(I)/2012 and SRO 548(I)/2012 here on Wednesday.

The Board has exempted withholding agents from payment of default surcharge and penalty in cases where the defaulting withholding agents would deposit the due amount of tax in the government treasury on or before May 31, 2012.

The FBR has also exempted default surcharge and penalty for non-payment of payable by a person against whom an amount of sales tax or federal excise duty is outstanding on account of any audit observation, audit report.

show cause notice or and adjudication order, or who has failed to pay any amount of sales tax or federal excise duty or claimed inadmissible input tax credit, adjustment, refund, drawback or rebate due to any reason.

This is subject to the condition that the outstanding principal amount of sales tax or federal excise duty is paid by May 31, 2012.

According to the notification, the FBR has exempted whole of the amount of default surcharge and penalty for non-payment under the Income Tax Ordinance 2001 in cases, where the withholding agents have not deducted advance withholding tax as required under the said Ordinance or the withholding agents have deducted or withhold income tax but not deposited the tax deducted or withheld within due date as prescribed under the Ordinance; or any tax amount is outstanding as on the 30th April, 2012.

In case the defaulting withholding agents or taxpayers would deposit the due amount of tax in the government treasury on or before May 31, 2012, the Board would not impose default surcharge and penalty in such cases.

Through another SRO, the federal government has exempted whole of the amount of default surcharge and penalty for non-payment of payables by a person against whom an amount of sales tax or federal excise duty is outstanding on account of any audit observation, audit report, show cause notice or and adjudication order, or who has failed to pay any amount of sales tax or federal excise duty or claimed inadmissible input tax credit, adjustment, refund, drawback or rebate due to any reason, subject to the condition that the outstanding principal amount of sales tax or federal excise duty is paid by the 31st May, 2012.

Provided that where refund becomes due to any person in consequence of a decision or judgment of court after the issuance of this Notification, the tax deposited by that person under this Notification shall be refunded to him.

The benefit of this concession shall not be available in eases of fraudulent refunds or drawback and other tax fraud.

Following is the text of the notifications issued here on Wednesday: S.R.O. 547(I)/2012: -In exercise of the powers conferred by section 183 of the Income Tax Ordinance. 2001 (XLIX of 2001), the Federal Government is pleased to exempt whole of the amount of default surcharge and penalty for non-payment leviable under the said Ordinance in cases, where

the withholding agents have not deducted advance withholding tax as required under the said Ordinance: or the withholding agents have deducted or withhold income tax but not deposited the tax deducted or withheld within due dates as prescribed under the Ordinance; or any tax amount is outstanding as on the 30th April, 2012, and the defaulting withholding agents or taxpayers specified in clauses (i), (ii) and (iii.) deposit the due amount of tax in the government treasury on or before the 31st May, 2012.

In a case where refund becomes due to any person in consequence of a decision or judgment of court after the issuance of this Notification, the tax deposited by that person under this Notification shall he refunded to him.

SRO 548(I)/2012: In exercise of the powers conferred by section 34A of the Sales Tax Act, 1990 and sub-section (4) of section 16 of the Federal Excise Act 2005, the Federal Government is pleased to exempt whole of the amount of default surcharge and penalty for non-payment payable by a person against whom an amount of sales tax or federal excise duty is outstanding on account of any audit observation, audit report.

show cause notice or and adjudication order, or who has failed to pay any amount of sales tax or federal excise duty or claimed inadmissible input tax credit, adjustment, refund, drawback or rebate due to any reason, subject to the condition that the outstanding principal amount of sales tax or federal excise duty is paid by the 31st May, 2012:

Provided that where refund becomes due to any person in consequence of a decision or judgment of court after the issuance of this Notification, the tax deposited by that person under this Notification shall be refunded to him.

Benefit of this Notification shall not be available in eases of fraudulent refunds or drawback and other tax fraud. – *Courtesy Business Recorder*

There will be no new tax, foreign investors told

Finance Minister Dr Abdul Hafeez Shaikh assured foreign investors that no new taxes would be imposed in the next budget.

Dr Shaikh made the statement on his visit to Overseas Investors Chamber of Industry (OICCI).

Dr Shaikh was accompanied by Ministry of Finance Secretary Abdul Wajid Rana, Federal Board of Revenue Chairman Mumtaz Haider Rizvi, Member Inland Revenue Shahid Hussain Asad and other senior FBR officials.

Talking to OICCI members, Hafeez Shaikh highlighted that after the NFC award, there had been a significant reduction in the federal government's revenue share without a corresponding reduction in debt servicing or other necessary expenditure on defence, security and ongoing projects, adding that he now expected provinces to take a lead on new development projects.

Shaikh pointed out that despite the global meltdown and challenging business environment, Pakistan's 3.7 percent GDP growth during fiscal year 2011-12 was comparable to growth rates across the region, excluding those in China and India.

Further, he pointed out that FBR had also been successful in generating 17 percent additional federal revenues in 2010-11 that were expected to scale up further to 25 percent in the current fiscal.

In his briefing to the Minister, OICCI President Humayun Bashir outlined the contribution of its membership in spurring economic growth by enhancing employment opportunities and taxes.

"Some 45 percent of OICCI members invested about one billion dollars in 2011 and plan to invest more than three billion dollars over the next two to five years," he added.

Bashir underscored that those numbers could be increased considerably if the government addressed key concerns such as security, energy shortage and ensure effective policy implementation.

OICCI members raised important issues concerning the taxation structure in light of the upcoming budget, including loss of revenue accruing from the tax exempt sector and evasion in the form of rampant smuggling of consumer goods, especially under the garb of Afghan Transit Trade.

Other taxation proposals forwarded to the government by OICCI focused on broadening of tax net through linkages of FBR databases with banks and other business centres, doing away with minimum tax and fixed tax regimes for companies, introducing a uniform tax rate of 30 percent for all businesses irrespective of their legal status, giving a one-time tax incentive for attracting Foreign Direct Investment, simplifying procedures for sales tax refund, allowing adjustments of sales tax on pharmaceutical inputs and reduction and consolidation of different levies such as stamp duty.

Dr Shaikh appreciat ed the suggestions which, he said, would be given due consideration in the run-up to the budget.

The oldest trade body in the country, OICCI represents 187 foreign companies operating in Pakistan, many of which began operations over 60 years ago.

Of these, 100 companies collectively contributed over Rs 300 billion to the national exchequer in 2010.

OICCI also has a representative and advocacy role and liaises with government, regulatory bodies and policy makers. – *Courtesy Business Recorder*

FBR slashes minimum tax under Section 113

The Federal Board of Revenue (FBR) has reduced minimum tax under Section 113 of the Income Tax Ordinance, 2001 for motorcycle dealers, steel melters & steel re-rolling mills and slashed withholding tax payment u/s 153(1)(a) of the Ordinance 2001 for steel melters and steel re-rolling mills.

In this connection, the FBR has issued SRO.549(I)/2012 and SRO.550(I)/2012 here on Wednesday to amend the Second Schedule of the Income Tax Ordinance 2001.

Details of the notifications revealed that the FBR has given deadline of June 30, 2012 to the motorcycle dealers for payment of minimum tax on turnover for availing reduction of 50% minimum tax for Tax Year 2011.

The FBR has given deadline of May 31, 2012 to the steel melters for payment of minimum tax.

In case of withholding tax payment under u/s 153(1)(a) of the Ordinance, the steel melters have to deposit the tax by the deadline of June 30, 2012.

For the steel re-rolling mills, minimum tax has to be deposit by May 31, 2012 and withholding tax payment under u/s 153(1)(a) has to be deposited by June 30, 2012.

The FBR has issued SRO. 549(I)2012 wherein conditional reduction in payment of minimum tax u/s 113 of the Income Tax Ordinance has been allowed by adding clause 15 under Part-III of the Second Schedule to the Income Tax Ordinance, 2001.

For motorcycle dealers registered under the Sales Tax Act, 1990 for Tax Year 2011 it would be reduced up to 50% of the tax payable and for Tax Year 2012 it would be reduced by 75% of the minimum tax payable u/s 113 of the Ordinance.

At present minimum tax u/s 113 is payable at the standard rate of 1% of the total turnover of a taxpayer.

As per notification S.R.O. 550 in case of steel melters and steel re-rolling mills, who have opted under Sales Tax Special Procedure Rules, 2007, conditional payment of minimum tax u/s 113 and reduction in withholding tax payment u/s 153(1)(a) of the Ordinance, has been allowed.

A new clause 24B has been inducted under Part II of the Second Schedule to the Income Tax Ordinance, 2001.

According to the SRO 549(I)/2012, the rate of minimum tax under section 113 for the motorcycle dealers registered under the Sales Tax Act, 1990 shall be reduced by fifty per cent for the Tax Year 2011 provided that they deposit their minimum tax on turnover by June 30, 2012 and for the Tax Year 2012 onwards, the rate of minimum tax would be reduced by 75 percent.

Through S.R.O. 550(I)/2012, in case of steel melters, who have opted under the Sales tax Special Procedure Rules 2007 for the Tax Year 2011 the rate of minimum tax under subsection (1) of section 113 shall be 0.5% of turnover or Rs 280 per Metric Ton, whichever is higher, provided that the consequent tax liability is deposited by May 31, 2012.

For Tax Years 2008 to 2010, the rate of withholding tax under section 153(i)(a) on purchase of steel scrap shall be 1% of value of purchases or Rs 300 per Metric Ton, whichever is higher provided that the consequent tax liability is deposited by June 30, 2012.

For Tax Years 2011 and 2012, the rate of withholding tax under section 153(1)(a) on purchase of steel scrap shall be one percent of value of purchases or Rs 400 per Metric ion, whichever is higher, provided that the consequent tax liability for the tax year 2011 is deposited by June 30, 2012.

In case of steel re-rolling mills, who have opted under the Sales tax Special Procedure Rules 2007, for the Tax Year 2011, the rate of minimum tax under subsection (1) of section 113 shall be 0.5% of turnover or Rs 315 per Metric Ton, whichever is higher, provided that the consequent tax liability is deposited by May 31, 2012.

For the tax years 2008 to 2010, the rate of withholding tax under section 153(1)(a) on purchase of ingots and billets shall be 1% of value of purchases or Rs 400 per Metric Ton, whichever is higher, provided that the consequent tax liability is deposited by June 30, 2012.

For the Tax Years 2011 and 2012, the rate of withholding tax under section 153(1)(a) on purchase of ingots and billets shall be one percent of the value of purchases or Rs 450 per Metric Ton, whichever is higher, provided that the consequent tax liability for the tax year 2011 is deposited by June 30, 2012.

Clause 12(c) in Part IV has been omitted which provide rate of withholding tax at the rate of 1 percent, notification further added. – *Courtesy Business Recorder*

Admissibility of input tax adjustment: FBR examining sugar industry's presentation

The Federal Board of Revenue is examining a presentation of the sugar industry for withdrawal of the FBR clarification issued on the admissibility of input tax adjustment pertaining to sugar cleared at reduced rate of 8 percent since August, 2009.

Sources told here on Wednesday that Large Taxpayer Unit (LTU) Lahore had raised an objection on the admissibility of whole input tax adjustment in respect of sugar cleared at reduced rate of 8% ever since August 2009.

Consequently, tax demand is likely to be raised against the sugar mills on the argument that section 8 of the Sales tax Act, 1990 does not allow input tax adjustment on exempt supplies.

The FBR had confirmed the legal interpretation of the LTU Lahore.

When contacted, tax official said that at present, the FBR is reviewing the legal viewpoint of the industry to check the legal objections raised by the industry on the FBR's clarification.

In this regard, the legal interpretation of the LTU Lahore would also be considered to response to the queries raised by the industry.

However, the FBR's clarification has been purely based on the legal provisions of the Sales Tax Act 1990 and relevant rules/regulations, he added.

On the other hand, Pakistan Sugar Mills Association (PSMA) has informed the FBR that after the Budget 2009-10, the ceiling or capping over tax incidence through price fixation was discontinued and as an alternative measure, the tax rate was reduced by 50% from 16% to 8% vide notification dated 23.08.2009.

The government had exempted sugar from sales tax and levied Federal Excise duty @ 8% on both local supply and imports, thereby creating a fiscal equity between local production and import substitute.

However, FED was made chargeable in GST mode.

When the Government took decision to stabilise sugar prices and to benefit the ultimate low income consumers by reducing GST incidence, no condition whatsoever was attached with the decision, which means rest of the GST system was to operate in a normal manner for sugar industry.

However, recently LTU Lahore has raised an objection on the admissibility of whole input tax adjustment in respect of sugar cleared at reduced rate of 8% ever since August 2009.

Consequently demand of over Rs 1.2 billion has been or is likely to be raised against the sugar mills throughout Pakistan.

The principle ground of raising such belated demand is that section 8 of the Sales tax Act, 1990 does not allow input tax adjustment on exempt supplies.

The FBR without considering the actual policy background of the issue, confirmed the historically and legally wrong view point of LTU Lahore.

The industry is of view that the input-output tax ratio in sugar industry is that under no circumstances, the input tax component constitutes more than 3% of the output tax.

The LTU Lahore and other Inland Revenue field offices are declining 50% of input tax adjustment.

Even on 50% sales tax rate, sugar industry has annually been contributing almost Rs 24 billion towards national exchequer.

The issue of inadmissibly of input tax adjustment commensurating to the 50% of standard tax rate was consciously ignored in 2009 (and even prior to that) and no restriction or condition to this affect was incorporated in the notification.

During 2009, the question of disallowing 50% of input tax adjustment was not raised primarily because of the fact that component of input tax in sugar industry is always on very lower side and the FBR as a matter of policy agreed to forego the issue of restricting input tax adjustment because the primary purpose of applying reduced rate was to stabilise sugar prices.

It was only an element of consumer welfare that input tax adjustment was not disallowed either proportionally or otherwise in case of sugar supplied either at fixed assessable value or at reduced rate of sales tax, industry said.

The section 8 of the Sales Tax Act does not bar or otherwise impact input tax adjustment on reduced rate taxable supplies.

It speaks of taxable supplies on the one hand and non-taxable (or exempt) supplies on the other.

It does not cater for defining the physically same supply as a mixed (both taxable and non-taxable) supply.

More importantly, section 8 does not require for splitting the same supply into taxable or non-taxable (exempt) components, parts or segments.

Supply is either taxable or non-taxable.

It cannot be simultaneously treated as taxable and non-taxable. – *Courtesy Business Recorder*

S.R.O. 463(I)/2012, Islamabad, the 28th April, 2012.– In exercise of the powers conferred by sub-section (2) of section 53 of the Income Tax Ordinance 2001 (XLIX of 2001), the Federal Government is pleased to direct that the following further amendment shall be made in the Second Schedule of the said Ordinance, namely:–

In aforesaid Schedule, in Part I, in clause (66), after sub-clause (xxvii), the following new sub-clause (xviii) shall be inserted namely:–

"(xviii) Wapda Second Sukuk Company Limited.".

C.No.4(1)ST-L&P/2011 Islamabad, the 19th May, 2012

SALES TAX GENERAL ORDER NO. 29/2012

Subject: **Amendment in STGO 10/2007 dated 13-09-2007 – allowing facility of zero-rating on supply of electricity.**

In exercise of powers conferred by clause (d) of section 4 of the Sales Tax Act, 1990, the Federal Board of Revenue is pleased to make the following further amendments in its Sales Tax General Order No. 10 of 2007 dated 13th September, 2007, namely:–

In the aforesaid General Order, in the table, after serial number 283 in column (1) and the entries relating thereto in columns (2), (3) and (4), the following new serial numbers and the entries relating thereto shall be **added,** namely:–

S. #	Name of Unit	Registration No.	Consumer No.
1100	M/S AL-ZAHOOR WEAVING INDUSTRIES	0408520812037	27561209438003U

C.No.4(4)ST-L&P/2011 Islamabad, the 21st May, 2012

SALES TAX GENERAL ORDER NO. 30/2012

Subject: **Amendment in STGO 11/2007 dated 13-09-2007 – allowing facility of zero-rating on supply of electricity.**

In exercise of powers conferred by clause (d) of section 4 of the Sales Tax Act, 1990, the Federal Board of Revenue is pleased to make the following further amendments in its Sales Tax General Order No. 11 of 2007 dated 13th September, 2007, namely:–

In the aforesaid General Order, in table, after Serial Number 573 in columns (1) and the entries relating thereto in columns (2), (3) and (4), the following new serial number and the entries relating thereto shall be **added**, namely:–

(1)	(2)	(3)	(4)
S.No.	**Name of Registered Person**	**Sales Tax Registration Number**	**Electricity bill Reference No. or Consumer No. or Account No.**
574	M.D. Textile Spinning Mills (Pvt.) Limited	2500030572510	(i) 28121421245700U (new) 14214200032000U (old) (ii) 28121421245800U (new) 24214100037005U (old)

C.No.4(5)ST-L&P/2011 Islamabad, the 21st May, 2012

SALES TAX GENERAL ORDER NO. 31/2012

Subject: **Amendment in STGO 08/2007 dated 13-09-2007 – allowing facility of zero-rating on supply of electricity.**

In exercise of powers conferred by clause (d) of section 4 of the Sales Tax Act, 1990, the Federal Board of Revenue is pleased to make the following further amendments in its Sales Tax General Order No. 08 of 2007 dated 13th September, 2007, namely:–

In the aforesaid General Order, in the table, after serial number 776 in column (1) and the entries relating thereto in columns (2), (3) and (4), the following new serial numbers and the entries relating thereto shall be **added, namely:–**

S. #	Name of Unit	Registration No.	Consumer No.
777	M/S N.W. Industry	0300590900246	24117119002100U

S.R.O. 522(I)/2012, Islamabad, the 21st May, 2012.– In exercise of the powers conferred by sub-sections (2) and (3) of section 98 of the Customs Act, 1969 (IV of 1969), the Federal Government is pleased to –

(a) extend up to the 15th June, 2012 the period for which warehoused goods may remain in the warehouse; and

(b) remit penal surcharge in the case of goods which are cleared from the warehouse within the period starting on the 21st May, 2012 and ending on the 15th June, 2012:

Provided that this notification shall not apply to the goods which have since been abandoned or auctioned under the rules.

S.R.O. 547(I)/2012, Islamabad, the 22nd May, 2012.– In exercise of the powers conferred by section 183 of the Income Tax Ordinance, 2001 (XLIX of 2001), the Federal Government is pleased to exempt whole of the amount of default surcharge and penalty for non-payment leviable under the said Ordinance in cases, where–

(i) the withholding agents have not deducted advance withholding tax as required under the said Ordinance; or

(ii) the withholding agents have deducted or withheld income tax but not deposited the tax deducted or withheld within due dated as prescribed under the Ordinance; or

(iii) any tax amount is outstanding as on the 30th April, 2012,

and the defaulting withholding agents or taxpayers specified in clauses (i), (ii) and (iii) deposit the due amount of tax in the government treasury on or before the 31st May, 2012.

2. In a case where refund becomes due to any person in consequence of a decision or judgment of court after the issuance of this Notification, the tax deposited by that person under this Notification shall be refunded to him.

S.R.O. 548(I)/2012, Islamabad, the 22nd May, 2012.– In exercise of the powers conferred by section 34A of the Sales Tax Act, 1990 and sub-section (4) of section 16 of the Federal Excise Act, 2005, the Federal Government is pleased to exempt whole of the amount of default surcharge and penalty for non-payment payable by a person against whom an amount of sales tax or federal excise duty is outstanding on account of any audit observation, audit report, show cause notice or any adjudication order, or who has failed to pay any amount of sales tax or federal excise duty or claimed inadmissible input tax credit, adjustment, refund, drawback or rebate due to any reason, subject to the condition that the outstanding principal amount of sales tax or federal excise duty is paid by the 31st May, 2012;

Provided that where refund becomes due to any person in consequence of a decision or judgment of court after the issuance of this Notification, the tax deposited by that person under this Notification shall be refunded to him.

2. Benefit of this Notification shall not be available in cases of fraudulent refunds or drawback and other tax refund.

S.R.O. 549(I)/2012, Islamabad, the 22nd May, 2012.– In exercise of the powers conferred by sub-section (2) of section 53 of the Income Tax Ordinance, 2001 (XLIX of 2001), the Federal Government is pleased to direct that the following further amendments shall be made in the Second Schedule to the said Ordinance, namely:–

In the aforesaid Schedule, in Part III, after clause (14), the following new clause shall be added, namely:–

"(15) for the motorcycle dealers registered under the Sales Tax Act, 1990, the rate of minimum tax under section 113 –

(i) For the tax year 2011 shall be reduced by fifty per cent provided that they deposit their minimum tax on turnover by the 30th June, 2012, and

(ii) For the tax year 2012 onwards shall be reduced by seventy-five per cent.".

S.R.O. 550(I)/2012, Islamabad, the 23rd May, 2012.– In exercise of powers conferred by sub-section (2) of section 53 of the Income Tax Ordinance 2001 (XLIX of 2001), the Federal Government is pleased to direct that the following further amendment shall be made in the Second Schedule of the said Ordinance, namely:–

(a) In the second Schedule; in Part-II, after clause (24A), the following new clause (24B) shall be inserted, namely:–

"(24B) (a) In case of Steel Melters, who have opted under the Sales Tax Special Procedure Rules 2007,-

(i) for the tax year 2011, the rate of minimum tax under sub-section (1) of section 133 shall be 0.5% of turnover or Rs.280 per Metric Ton, whichever is higher, provided that the consequent tax liability is deposited by 31st May, 2012;

(ii) for the tax years 2008 to 2010, the rate of withholding tax under section 153(1)(a) on purchase of steel scrap shall be 1% of value of purchases or Rs.300 per Metric Ton, whichever is higher, provided that the consequent tax liability is deposited by 30th June, 2012; and

(iii) for the tax years 2011 and 2012, the rate of withholding tax under section 153(1)(a) on purchase of steel scrap shall be 1% of value of purchases or Rs.400 per Metric Ton, whichever is higher, provided that the consequent tax liability for the tax year 2011 is deposited by 30th June, 2012.

(b) In case of Steel Re-rolling Mills, who have opted under the Sales Tax Special Procedure Rules 2007,-

(i) for the tax year 2011, the rate of minimum tax under sub-section (1) of section 113 shall be 0.5% of turnover or Rs.315 per Metric Ton, whichever is higher, provided that the consequent tax liability is deposited by 31st May, 2012;

(ii) for the tax years 2008 to 2010, the rate of withholding tax under section 153(1)(a) on purchase of ingots and billets shall be 1% of value of purchases of Rs.400 per Metric Ton, whichever is higher, provided that the consequent tax liability is deposited by 30th June, 2012; and

(iii) for the tax years 2011 and 2012, the rate of withholding tax under section 153(1)(a) on purchase of ingots and billets shall be 1% of the value of purchases or Rs.450 per Metric Ton, whichever is higher, provided that the consequent tax liability for the tax year 2011 is deposited by 30th June, 2012"; and

(b) in Part-IV, in clause (12), sub-clause (c) shall be omitted.

2012 PTR 1132 (Trib. Ind.)

INCOME TAX APPELLATE TRIBUNAL
DELHI "G" BENCH, DELHI

G.E. Veerabhadrappa, President and A.D. Jain, Judicial Member

FACTS/HELD

1. **Section 14A: Onus is on AO to show expenditure is incurred to earn tax-free income**
2. For AY 2006-07, the assessee earned dividend of Rs. 17 lakhs and LTCG of Rs. 12 crores. The assessee claimed that it had incurred no expense to earn the tax-free income and so no s. 14A disallowance was permissible. However, the AO disallowed Rs. 2 crores under Rule 8D towards interest and admin expenditure. The CIT (A) accepted that no interest was incurred and deleted that disallowance. He also reduced the admin expenditure disallowance. On appeal to the Tribunal, HELD:

   (i) The contention of the Revenue that some expenditure, directly or indirectly, is always incurred for earning tax-free income cannot be accepted. **The burden is on the AO to establish the nexus of the expenditure incurred with the earning of exempt income** before making any disallowance u/s 14A (Hero Cycles 323 ITR 518 (P&H), Jindal Photo followed)

   (ii) As regards interest, the **AO has to show the nexus** between the borrowed funds and the tax free investments. If that is not done, disallowance of interest is not permissible (K. Raheja Corporation (Bom) followed)

   (iii) As regards admin expenses, s. 14A disallowance cannot be made on an **ad-hoc basis**. It is the **department's responsibility** to bring material on record to show that **expenditure was incurred** for earning the exempt income. If this is not done, disallowance is not permissible (Wimco Seedlings followed)

Order accordingly.

ITA No. 2431(Del)2010 Assessment year: 2006-07 and C.O. No.349(Del)2010 (in ITA 2431(Del)2010) Assessment year: 2006-07.

Decided on: 5th May, 2012.

Present at hearing: S. Mohanty, DR, for Department. Ajay Vohra, Advocate, Rohit Jain, CA and Janpriya Rooprai, Advocate, for Assessee.

JUDGMENT

Per A.D. Jain:– (Judicial Member)

These are Department's appeal and the assessee's cross objections against the order dated 4.2.2010 passed by the CIT(A), XI, New Delhi. The following grounds have been taken by the Department:–

1. *"Ld. Commissioner of Income Tax (Appeals) erred, in law and on the facts and circumstances of the case, in restricting the disallowance of Rs. 2,08,83,181/- made by the AO u/s 14A of the I.T. Act to Rs. 16,54,531/-*
2. *Ld. Commissioner of Income Tax (Appeals) erred, in law and on the facts and circumstances of the case, in deleting the disallowance of Rs. 5,000/- made by the AO on account of fines & penalties.*
3. *Ld. Commissioner of Income Tax (Appeals) erred, in law and on the facts and circumstances of the case, in directing the AO as under:–*
   - *i) To verify the claim of the assessee and exclude interest income from UTI from income after due verification.*
   - *ii) To allow the balance 50% of additional depreciation after verifying the contention of the assessee that 50% of additional depreciation was claimed and allowed in immediately preceding year i.e. A.Y. 2005-06.*
   - *iii) Verify the claim of the assessee and allow credit of the TDS.*

     Since the CIT(A), as per the provisions of section 251 (1)(a) of the I.T. Act, may confirm, reduce, enhance or annul the assessment and the above directions of the CIT(A) amount to setting aside the grounds of appeal."

2. The assessee has raised the following cross objections:–

1. *"That the CIT(A) erred on facts and in law in confirming the disallowance of expenditure amounting to Rs. 16,54,525/- under section 14A Income-tax Act, 1961 (the Act), alleged to have been incurred for earning tax free dividend income.*

   That the CIT(A) erred on facts and in law in not holding that disallowance under section 14A of the Act, could not have been worked out as per the method provided in Rule 8D of the Income-

tax Rules, 1962 ('the Rules') since the same was prospective in operation and was not applicable to the year under consideration.

2. *That the CIT(A) erred on facts and in law in not directing the assessing officer to allow deduction under section 801A/80IB of the Act in respect of the three units of the appellant.*

2.1 *That the CIT(A) erred on facts and in law in not appreciating that deduction under section 80IA/80IB of the Act was not allowed in respect of the profits of the three units for the period 01.04.2005 to 30.06.2005 to the appellant as well as the resulting company."*

3. Apropos ground No.1 of the Department's Appeal & Cross Objection No.1 of the assessee, as per the assessment order, the AO noticed that the assessee had earned dividend income of Rs. 17,32,701/- and long term capital gain of Rs. 12,15,93,111/-, against which, no expenses had been claimed to have been incurred. The AO asked the assessee to explain as to why disallowance u/s 14A of the I.T. Act be not made in respect of expenses attributable to income exempt u/s 10 of the Act. The assessee submitted that no expenses had been incurred to earn the exempt income. The AO, however, disagreed with the stand taken by the assessee. It was observed that the assessee had an opening balance of investment of Rs. 88,85,47,596/- and a closing balance of Rs. 1,00,47,31,991/-, from which, the assessee had earned the exempt income; that as available from the assessee's Profit and Loss Account, the assessee had incurred an interest cost of Rs. 3,22,99,963/- during the year; that the assessee company had been carrying on the business of manufacture of yarn, which had been transferred to Sutlej Textiles and Industries Ltd. ('STIL', for short), with effect from 1.7.2007, as per the scheme of arrangement sanctioned by the Hon'ble Rajasthan High Court; that the assessee company had retained the investment business; that as such, 50% of the expenses on account of interest were being treated as incurred for investment business, from which, the assessee had earned income in the form of dividend and capital gains; and that it was clear that the assessee had earned exempt income at the costs debited to the Profit and Loss Account. The AO further held that following the Special Bench decision of the Tribunal in "ITO, Mumbai v. Daga Capital Management Pvt. Ltd.", 2008 – TIOL – 509-Mumbai-(SB), Rule 8 D of the I.T. Rules read with Sections 14A(2) & (3) of the Act are applicable with retrospective effect. Holding so, the AO worked out the disallowance u/s 14 A of the Act as follows:–

A) Direct cost	
(50% of Interest)	1,61,49,981/-
B) Indirect cost	

Opening balance of Investment	88,85,47,596/-
Closing balance of Investment	100,47,31,991/-
	189,32,79,587/-
	94,66,39,793/-
	47,33,200/-
Total disallowance u/s 14A (A+B)	2,08,83,181/-

4. Before the ld. CIT(A), the assessee contended that as per the Scheme of demerger, the entire interest bearing liabilities, namely, secured and unsecured loans, belonging to the assessee company as on 30.6.05, the date preceding the date of demerger, were relatable to the demerged Textile Division and were transferred to the resulting company, i.e., STIL, as part of the demerger. The assessee supported such contention with documentary evidence, i.e., Schedule of assets and liabilities in respect of the residual undertaking forming part of the Scheme of demerger, the Profit and Loss Account of the Company for the period from 1.7.2005 to 31.3.2006, wherein nil interest expenses had been debited and comparative Profit and Loss Account for the demerger period and for the complete year, showing that the entire interest expenditure related to the pre-demerger period from 1.4.2005 to 30.6.2005. The assessee thus contended that there was no interest expenditure actually related to the investment activity and so, no part of interest expenditure was disallowable u/s 14A of the Act. It was submitted that during the post demerger period, the assessee only had investment activity; that expenses of only Rs. 9,26,788/- had been claimed as deduction towards remuneration to Director, Audit Fee, etc., which also could not be said to be related to the earning of exempt income; that during the pre-demerger period, disallowance, if any called for, could be of only Rs. 7,27,743/-, since the rest of the expenditure related to Haridwar Holiday Home and Dehradun Holiday Home, which had also demerged with the Textile business; and that Rule 8D of the I.T. Rules was applicable only prospectively and not retrospectively.

5. The ld. CIT(A) asked for a remand report from the AO. In the remand report, the AO stated that interest expenditure also related to the investment activity and that the assessee was wrong in contending that no expenses related to the dividend income.

6. So far as regards the applicability of Rule 8D of the Income Tax Rules, the ld. CIT(A) confirmed the AO's view of the said Rule being retrospectively applicable. In doing so, the ld. CIT(A) also went by "Daga Capital Management"(supra).

7. So far as regards the merits of the disallowance, the ld. CIT(A) observed that the disallowance had been made on account of interest expenditure and other administrative and operative expenses.

Concerning the interest expenditure, the ld. CIT(A) had asked the assessee to file the audited financial statements of STIL, i.e., the resulting company, as on 31.3.2006. There-from, the ld. CIT(A) observed that the entire loan, on which the interest expenditure had been incurred, actually stood transferred from the assessee company to STIL, pursuant to the scheme of demerger sanctioned by the Hon'ble Rajasthan High Court. The ld. CIT(A) observed that it stood established that the entire interest expenditure actually related to the earning of taxable income from the Textile Division and not to the earning of any exempt income. It was held that therefore, no part of the interest expenditure was disallowable u/s 14A of the Act read with Rule 8D of the Rules.

8. Regarding the disallowance of Rs. 47,33,200/- out of administrative and operative expenses, the ld. CIT(A) observed that the entire expenditure during the pre-demerger period, excepting Rs. 12,99,537/- related to the demerged Textile Division; that for the post-demerger period, the total expenditure was of Rs. 21,06,266/-, out of which, the assessee had itself disallowed Rs. 11,79,478/- and had claimed only the balance of Rs. 9,26,788/-; and that thus, the total pre-demerger and post-demerger expenses, from which, disallowance could be made, aggregated to Rs. 22,26,325/-. The ld. CIT(A) observed that the disallowance of Rs. 47,33,000/-, as made by the AO u/s 14A of the Act read with Rule 8D of the Rules could not be sustained, since such disallowance had to be restricted to the actual expenditure incurred. The ld. CIT(A) further observed that, on the other hand, the contention of the assessee that no part of the expenditure of Rs. 22,26,000/- was disallowable, was also not acceptable; and that the assessee had *actually earned* exempt dividend income, due to which, the expenditure incurred in relation to such income needed to be disallowed in terms of section 14A of the Act. Observing that the expenditure of Rs. 5,71,794/- related to Haridwar Holiday Home and Dehradun Holiday Home, which also stood demerged as part of the Textile Division, the ld. CIT(A) reduced this amount from the amount of Rs. 22,26,000/- and held the entire balance expenditure of Rs. 16,54,531/- to be relating to the investment activity of the assessee company. It is this amount of Rs. 16,54,531/-, to which the disallowance of Rs. 2,08,83,181/-, as determined by the AO, was restricted by the ld. CIT(A).

9. The Department has raised ground No.1 of its appeal against this action of the ld. CIT(A), seeking confirmation of the entire disallowance of Rs. 2,08,83,181/-, as made by the AO. The assessee, on the other hand, has taken Cross Objection No.1, requesting for the deletion of the entire disallowance as against that restricted by the ld. CIT(A) to Rs.16,54,531/-.

10. The learned counsel for the assessee has made oral arguments and a chart of issues had been filed as well. It has been contended that the provisions of section 14A of the Act are applicable only to expenditure incurred in relation to income not forming part of the total income.

Reliance in this regard has been placed on "CIT v. Walfort Share and Stock Brokers", 326 ITR 1(SC) and "Godrej & Boyce Manufacturing Co. Ltd., Bombay v. DCIT", 328 ITR 81(Bom). It has been contended that in the present case, during the year, no expense, having either any direct or any indirect relation with the earning of exempt income, was incurred by the assessee; that no part of the interest expenditure actually related to the investment division, as also noted by the ld. CIT(A), since the entire loan on which the interest had been paid, had been transferred to STIL, the resulting company, pursuant to the scheme of demerger, with effect from 1.7.05. The learned counsel for the assessee has drawn attention to a copy of the scheme of demerger [pages 1 to 20 of the Assessee's Paper Book ('APB' for short)] . Reference has, then, been made to the Schedule of assets and liabilities in respect of the residual undertaking of the assessee company (APB 21 to 76). Further, the Profit and Loss Account of the residual company for the period from 1.7.05 to 31.3.06 (APB 78), the comparative Profit and Loss Account for the segregated period from 1.4.05 to 30.6.05, of the consolidated company and that for the year ending 31.3.06 (APB 79 to 80) have also been referred to. It has been contended that if no nexus is shown between the borrowed funds and the tax free investment, no disallowance of interest on the borrowed funds can be made. For this proposition, reliance has been placed on the following case laws:–

1. "*CIT vs. Hero Cycles*", 323 ITR 518(P&H);
2. "*CIT vs. K. Raheja Corporation Pvt. Ltd.*", decision dated 8.8.11 in ITA No. 1260/2009, rendered by the Hon'ble Bombay High Court (Copy at pages 31 to 33 of the Case Laws Paper Book filed by the assessee, "CLPB" for short);
3. "*DCIT vs. Jindal Photo Ltd.*", authored by one of us, the J.M., on 22.12.10, in ITA No. 4539(Del)2010 (copy at CLPB 39 to 45);
4. "*Maruti Udyog Ltd. vs. DCIT*", 92 ITD 119(Del);
5. "*ACIT vs. Eicher Ltd.*", 101 TTJ 369(Del); and
6. "*DCIT vs. Maharashtra Seamless Ltd.*", 138 TTJ 244(Del).

11. Apropos the administrative expenditure, it has been contended on behalf of the assessee that firstly, no part of the administrative expenditure related to the investment division; that the AO did not bring anything on record to show that expenditure to have been incurred for earning exempt income; that the disallowance u/s 14A of the Act was made on an entirely adhoc basis, without discharging the onus of justifying the disallowance of such expenditure; and that this is impermissible in law, as laid down in –

1. "*Chemical and Metallurgical Design Co. Ltd.*", ITA No. 803/2008 …..?
2. "*PTC India Ltd. vs. DCIT*", ITA Nos. 580 & 581(Del)09(Del) …?

3. "*Wimco Seedlings Ltd. vs. DCIT*", 107 ITD 267(Del)(TM); and
4. "*CIT vs. Ms. Sushma Kapur*", 319 ITR 299(Del).

12. It has been further contended that even otherwise, the provisions of sections 14A(2) and (3) of the Act and Rule 8D of the Rules are prospective and cannot be applied for any assessment year prior to assessment year 2008-09. For this, reliance has been placed on –

1. "*Godrej & Boyce Manufacturing Co. Ltd. vs. DCIT*", 328 ITR 81(Bom);
2. "*Godrej Agrovet Ltd. vs. ACIT*", 326 ITR 81(Bom); and
3. "*Continental Carriers (P)Ltd. vs. ACIT*", 138 TTJ 249(Del).

13. Explaining the administrative expenditure actually incurred by the assessee, it has been contended that so far as regards the pre-demerger expenditure, the total expenditure was of Rs. 12,99,537/-. Reference in this regard had been made to APB 82 to 87. It has been submitted that this entire expenditure related to activities other than the activities of the Textile Division; that an amount of Rs. 11,76,500/- out of the said expenditure of Rs. 12,99,537/- was debited as "miscellaneous expenditure"; that out of this expenditure, expenditure of Rs. 5,71,794/- related to Haridwar Holiday Home and Dehradun Holiday Home, which were also demerged under the scheme, (with regard to which, APB 199 has been referred to); and that therefore, only the balance expenditure of Rs. 7,27,743/- was incurred during the three months period from 1.4.05 to 30.6.05, under the head of "miscellaneous expenditure". Referring to the post-demerger expenditure from 1.7.05 to 31.3.06, the learned counsel for the assessee has argued that the total expenditure during this period amounted to Rs. 21,06,266/- (APB 81 referred to); that this expenditure primarily comprised of a restructuring/demerger expenditure of Rs. 14,74,347/- and balance other expenses, with regard to which, our attention has been drawn to APB 78 to 80; that in the revised return of income, out of the demerger expenses of Rs. 14,74,347/-, an amount of Rs. 2,94,869/- had been claimed u/s 35 DD of the Act, whereas the balance expenditure of Rs. 11,79,478/- was disallowed in the return (reference made to APB 283); that therefore, a total expenditure of only Rs. 16,54,531/- had been claimed and disallowance, if at all, could have been made only out of the said expenditure of Rs. 16,54,531/-; that so, the ld. CIT(A) went wrong in disallowing the entire expenditure, particularly when there is no evidence available to suggest that even any part of such expenditure was incurred to earn exempt income; and that further more, this expenditure includes expenditure towards remuneration of Director and Audit Fees, which expenditure *had to be incurred*, irrespective of exempt income being received or not and these expenses also could not be held to be related to the earning of exempt income.

14. The learned DR, on the other hand, has contended that the ld. CIT(A) has erred in restricting the disallowance of Rs. 2,08,83,181/- made

by the AO u/s 14A of the Act to Rs. 16,54,531/-; that while doing so, the ld. CIT(A) has failed to take into consideration that the assessee had an opening balance of investment of Rs. 88,85,47,596/- and a closing balance of Rs. 1,00,47,31,991/-; that it was therefrom that the assessee had earned exempt income; that during the year, the assessee had incurred interest cost of Rs. 3,22,99,963/-, as available from the Profit and Loss Account; that the assessee had earned exempt income at the costs debited to the Profit and Loss Account; that undisputedly, a loan had been taken, on which, interest was being paid; that as such, the AO was right in holding 50% of the interest expenditure to be directly relatable to the earning of exempt income; that as such, the AO was correct in making the disallowance accordingly; that even though agreeing with the AO to the applicability of formula as per Rule 8D of the Rules, the ld. CIT(A) erred in restricting the disallowance made by the AO at Rs. 47,33,000/- being 0.5% of the average investment, to Rs. 22,26,000/-; that the ld. CIT(A) further erred in reducing a sum of Rs. 5,71,794/- and thereby restricting the disallowance to only Rs. 16,54,531/-; that even otherwise, the matter needs to be remitted to the AO to examine the expenses regarding the exempt income in the light of "Godrej & Boyce"(supra), as per which, even if the assessee has utilized its own funds for making investments which have resulted in income which does not form part of the total income under the Act, the expenditure which is incurred in the earning of that income would have to be disallowed, which expenditure is what the AO has to determine.

15. We have heard the parties and have perused the material on record with regard to this issue. The assessee is a limited company and is in the business of making investments, besides other business. Earlier, it was carrying on the activity of manufacturing and dealing in Textiles. The Textile Division of the assessee, however, got demerged into the resulting company, STIL, with effect from 1.7.05. The AO made disallowance of interest expenditure of Rs. 1,61,49,987/- and of other administrative and operative expenses of Rs. 47,33,200/-, total amounting to Rs. 2,08,83,181/-. The ld. CIT(A), apropos the interest expenditure, held that the entire loan on which the interest expenditure had been paid actually stood transferred from the assessee company to STIL, the resulting company, pursuant to the scheme of demerger. This fact, as found by the ld. CIT(A), has remained established. Nothing to the contrary has been brought out . It remains undisputed that in the audited financial statement of STIL, as on 31.3.2006, this loan stood transferred pursuant to the scheme of demerger, from the assessee company to STIL. This was in accordance with the scheme of demerger as approved by the Hon'ble Rajasthan High Court. A copy of the said scheme of demerger is at APB 1 to 20. As per this scheme, the liabilities, duties and obligations of the assessee company relating to the demerged Textile Division were to be transferred to the resulting company, STIL. Then, as per the Schedule of assets and liabilities in respect of the residual undertaking forming

part of the scheme of demerger, the relevant portion whereof is at APB 62 to 64, after the demerger, the books of the assessee do not show any outstanding loans, signifying that all the loans pertaining to the demerged Textile Division stood transferred. APB 64, states, inter alia,:–

Secured loans - Nil

Unsecured loans - Nil

APB 62 to 64 constitute the statement of assets and liabilities in respect of the residual undertaking of SIL (the assessee) as on the date immediately preceding the appointed date. Further, the details of Profit and Loss Account of SIL (the assessee), from July, 2005 to March, 2006 (APB 78) gives the details of the expenditure, as per which, the total expenditure was of Rs. 21,06,266/-. The comparative Profit and Loss Account for the segregated period, i.e., from 1.4.05 to 30.6.05, of the consolidated company, and for the year ending 31.3.06, are at APB 79 to 80. Therein, no interest expenditure stands shown as relating to the period from 1.7.05 to 31.3.06, i.e., the period during which the assessee company was only an investment company. It was only to the three months period prior to the said period, i.e., from 1.4.05 to 30.6.05, that the total interest expenditure pertained. This clearly shows that the expenditure on interest concerned the demerged Textile Division of the assessee Company and not its investment activity.

16. As such, no nexus was brought by the AO between the borrowed funds and the tax free investment. That being so, disallowance of interest on borrowed funds was entirely uncalled for.

17. In “K. Raheja Corporation Pvt. Ltd.” (supra), it was held by the Hon’ble Bombay High Court that in the absence of any material or basis to hold that the interest expenditure directly or indirectly was attributable for earning the dividend income, the decision of the Tribunal in deleting the disallowance of interest made u/s 14A of the Act could not be faulted. In the facts of the present case, as discussed, “K. Raheja Corporation Pvt. Ltd.” (supra), is squarely applicable.

18. In “*CIT vs. Hero Cycles*” (supra), it was held by the Hon’ble Punjab & Haryana High Court, inter alia, that the contention of the Revenue that directly or indirectly some expenditure was always incurred, which must be disallowed u/s 14A of the Act and the impact of the expenditure so incurred could not be allowed to be set off against the business income which may nullify the mandate of section 14A, could not be accepted; and that the disallowance u/s 14A required a finding of incurring of expenditure and where it was found that for earning exempted income, no expenditure had been incurred, disallowance u/s 14A could not stand. In the present case, as seen, the AO has not established any nexus whatsoever between the borrowed funds and the investment made. Therefore, “Hero Cycles” (supra), is applicable.

19. In "*ACIT vs. Eicher Ltd.*" (supra), it has been held that the burden is on the AO to establish the nexus of the expenditure incurred with the earning of exempt income, before making any disallowance u/s 14A of the Act.

20. In "*Maruti Udyog*"(supra), it has been held that before making any disallowance u/s 14A of the Act, the onus to establish the nexus of the same with the exempt income, is on the Revenue.

21. In "*Jindal Photo*"(supra), following "Hero Cycles"(supra), "*Eicher Ltd.*"(supra), "*Maruti Udyog*"(supra) and other decisions, we have held as follows:-

> *"18. Now, as per section 14A(2) of the Act, if the AO, having regard the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of expenditure incurred in relation to income which does not form part of the assessee's total income under the Act, the AO shall determine the amount incurred in relation to such income, in accordance with such method as may be prescribed, i.e. under Rule 8D of the I.T. Rules. However, in the present case the assessment order does not evince any such satisfaction of the AO regarding the correctness of the claim of the assessee. As such, Rule 8D of the Rules was not appropriately applied by the AO as correctly held by the CIT (A). It has not been done by the AO that any expenditure had been incurred by the assessee for earning its dividend income. Merely, an ad hoc disallowance was made. The onus was on the AO to establish any such expenditure. This onus has not been discharged. In "CIT vs. Hero Cycles: (P & H) 323 ITR 518, under similar circumstances, it was held that the disallowance u/s 14A of the Act requires a clear finding of incurring of expenditure and that no disallowance can be made on the basis of presumptions. In "ACIT vs. Eicher Ltd.", 101 TTJ (Del.) 369, that it was held that the burden is on the AO to establish nexus of expenses incurred with the earning of exempt income, before making any disallowance u./s 14A of the Act. In "Maruti Udyog vs. DCIT, 92 ITD 119 (Del.), it has been held that before making any disallowance u/s 14A of the Act, the onus to establish the nexus of the same with the exempt income, is on the revenue. In "Wimco Seedlings Limited vs. DCIT", 107 ITD 267 (Del.) ™, it has been held that there can be no presumption that the assessee must have incurred expenditure to earn tax free income. Similar are the decisions in:*
>
> 1. *"Punjab National Bank vs. DCIT", 103 TTJ 908 (Del.);*
> 2. *"Vidyut Investment Ltd." 10 SOT 284 (Del.) ; and*
> 3. *"D.J. Mehta vs. ITO", 290 ITR 238 (Mum.) (AT).*

> *19. In view of the above, finding no error with the order of the CIT(A) on the point at issue , the same is hereby confirmed. Ground No. 3 is thus rejected."*

22. Moreover, as rightly contended, the finding of fact recorded by the ld. CIT(A), to the effect that no part of the interest expenditure actually related to the investment activity, has not been challenged by the Department.

23. Therefore, we hold that the ld. CIT(A) has correctly deleted the disallowance of the interest expenditure of Rs. 1,61,49,987/-.

24. Further, the AO made disallowance of Rs. 4,77,33,200/- out of administrative and operative expenses at 0.5% of the average investment of the assessee company, under the formula given in Rule 8D(2)(iii) of the Rules. The ld. CIT(A) observed that the entire expenditure incurred during the pre-demerger period related to the demerged Textile Division, but for Rs. 12,99,537/-. It was also noticed that the total expenditure for the post demerger period was of Rs. 21,06,266/-. Out of this amount, the assessee had itself disallowed Rs. 11,79,478/- and had claimed only the balance expenses of Rs. 9,26,788/-. The total expenses pre-demerger and post-demerger thus amounted to Rs. 22,26,325/-. The ld. CIT(A) observead that it was out of this amount that the disallowance could be made. The CIT(A) agreed in principle with the argument of the assessee that just since the AO had worked out the disallowance of Rs. 47,33,000/- u/s 14A of the Act, being 0.5% of the average investment under Rule 8D of the Rules, and this amount exceeded the total expenditure incurred in connection with the earning of the exempt income, the expenditure as worked out as per the Rules, could not be disallowed. The ld. CIT(A) was of the view that the disallowance was to be restricted to the total expenditure of Rs. 22,26,325/- (rounded off to the figure of Rs. 22,26,000/-), lest the disallowance exceeded even the actual expenditure incurred. However, the assessee's stand that no part of the expenditure determined at Rs. 22,26,000/- was disallowable, was not accepted by the ld. CIT(A), observing that the assessee had actually earned exempt income by way of dividend and in terms of section 14A of the Act, the expenditure incurred in relation to that income was required to be disallowed. As such, out of the expenditure determined at Rs. 22,26,000/-, the ld. CIT(A) subtracted the amount of Rs. 5,71,794/- representing expenditure relating to Haridwar Holiday Home and Dehradun Holiday Home, which were found to be demerged under the Demerger Scheme, and arrived at the figure of Rs. 16,54,531/-. The ld. CIT(A) held this amount to relate to the investment activity of the assessee company and disallowed it as against the disallowance of Rs. 47,33,200/- made by the AO.

25. The assessee maintains that the ld. CIT(A) has erred in disallowing the sum of Rs. 16,54,531/- also, as according to the assessee, no part of the administrative expenditure related to the investment division of the assessee. This contention of the assessee, it is seen, carries

force. To start with, it cannot be gainsaid that the disallowance u/s 14A of the Act cannot be made on an ad-hoc basis and it is the Department's responsibility to justify any such disallowance by bringing material on record to show that any expenditure was incurred for earning the exempt income. Reference in this regard has correctly been made to "*Wimco Seedlings Ltd. vs. DCIT*"(supra), wherein it has been held that there can be no presumption that the assessee must have incurred expenditure to earn tax free income. "*Wimco Seedlings Ltd.*" (supra) was followed by us in "*Jindal Photo*" (supra).

26. In "*Ms. Sushma Kapur*" (supra), it has been held by the Tribunal that to the extent it could be proved that the investment was made from borrowed funds, the expenses had been disallowed u/s 14A. This finding of fact recorded by the Tribunal was upheld by the Hon'ble jurisdictional High Court.

27. In the present case, the AO did not bring any evidence on record to establish that any expenditure had been incurred by the assessee company for earning the exempt income. In the absence of such evidence, it was wrong on the part of the AO to proceed to compute disallowance of the expenses u/s 14A of the Act by merely applying Rule 8D(2)(iii) of the Rules.

28. Apropos the assessee's contention regarding the applicability of the provisions of Sections 14A(2) and (3) of the Act and Rule 8D of the Rules being prospective with effect from assessment year 2008-09, such contention is supported by "*Godrej & Boyce*"(supra) and "*Godrej Agrovet Ltd.*"(supra). It is, however, well established, as held in "*Continental Carriers P.Ltd. vs. ACIT*", 138 TTJ 249(Del), that even prior to assessment year 2008-09, when Rule 8D of the Rules was not applicable, the AO was duty bound to determine the expenditure incurred in relation to income not forming part of the total income, by adopting a reasonable basis. Therefore, nothing stopped the AO from determining the expenditure incurred in relation to the exempt income earned by the assessee. But for doing so, a "reasonable basis" had to be adopted. And the most reasonable basis, rather, the first reasonable basis for such determination can be none else than the nexus between the expenditure incurred and the exempt income earned. Now, evidently, the AO did not establish any such nexus between the expenditure incurred and the exempt income earned by the assessee Company.

29. Even the ld. CIT(A), though he restricted the disallowance from Rs. 47,33,200/- to Rs. 16,54,531/-, did not establish any such nexus and it was merely observed that this amount related to the investment activity of the assessee Company, without clarifying as to how it was found to be so.

30. We find that apropos the pre-demerger expenditure incurred during the period from 1.4.05 to 30.6.06, the total expenditure relating to the activities other than those of the Textile Division of the assessee Company, as available from the consolidated Profit and Loss Account for

the year ended 31.3.06 of STIL (copy at APB 83 to 87), was Rs. 12,99,537/-, as follows:–

		Rs.
1.	Salary, wages, bonus etc.	61,353/-
2.	Employees' contribution to PF	2,792/-
3.	Rates and Taxes	3,440/-
4.	Insurance Premium(Net)	50,000/-
5.	Misc. expenses	11,76,500/-
	Total:	12,99,537/-

Out of the above expenditure of Rs. 12,99,537/-, it is seen, an amount of Rs. 11,76,500/- stands debited as misc.expenditure. The break up of these misc.expenses, as appended at APB 82, is as follows:–

Particulars	2005-06	3 Months	9 Months
*Detail of M/s. Expenses			
-Filing Fee	4000	0	4000
-General Expenses	12361	12361	0
-Postage & Telegram	118478	4929	113549
-Printing and Stationery	231675	469	231206
-Bank Commission	135	135	0
-Books and Periodicals	2497	2497	0
-Traveling Expenses	38696	38696	0
-Trunk & Telephone Exp.	1888	1888	0
-Haridwar Holiday Home	171231	171231	0
-Legal & Professional	80407	80407	0
-Electricity charges	2769	2769	0
-Water charges	425	425	0
-Advertisement	77570	77570	0
-Listing Fee	84250	58000	26250
-Maintenance Charges	3940	3940	0
-Directors Traveling	668018	178511	489507
-conveyance Charges	620	620	0
-Depository Fees	44080	44080	0
-Demat Expenses	46653	0	46653
-Dehradun Holiday Home Exp.	400563	400563	0
-Motor Car Exp.	80910	80910	0
-Press Conference Exp.	16500	16500	0
	2087666	1176501	911165

31. As noted above, an amount of Rs. 5,71,794/- was expenditure related to Haridwar Holiday Home (Rs. 1,71,231/-) and Dehradun Holiday Home (Rs. 4,00,563/-). These properties, pertinently, were shown in the Schedule forming part of the Balance Sheet as on 31.3.06 (copy at APB 199), as fixed assets of the company. Both these Holiday Homes, undeniably, were demerged under the Demerger Scheme and so, the ld. CIT(A) rightly did not disallow the expenditure on these Holiday Homes.

32. So, what remained as balance under the head of misc.expenditure incurred during the three months period from 1.4.2005 to 30.6.2005, was the amount of Rs. 7,27,743/-. Even this part of the expenditure has not been correlated by the Authorities below to the exempt income earned by the assessee Company.

33. So far as regards the post-demerger expenditure incurred by the assessee from 1.7.05 to 31.3.06, as available from the details of expenses in the Profit and Loss Account in March, 2006 and June, 2005, i.e., for the year ended 31.3.06 and for the period ended 30.6.05 (copy at APB 81), that is, the difference of expenses in the Profit and Loss Account for the period from 1.4.05 to 30.6.05 and 1.7.05 to 31.3.06, i.e., to say, the pre-demerger and the post-demerger periods, during the post-demerger period, the assessee had only investment activity and there was no activity of manufacture of Textiles, the Textile Division having been demerged. The total expenditure incurred during this period was of Rs. 21,06,266/-. This comprised of (as available from the copy of the details of the Profit and Loss Account of the assessee Company from July 2005 to March, 2006, at APB 78), of operative and other expenses of Rs. 14,78,766/- and Director's fees and commission of Rs. 6,27,500/-. The operative and other expenses of Rs. 14,78,766/- constituted, mainly, restructuring/demerger expenses of Rs. 14,74,347/- (APB 79). The balance operating and other expenses were of Rs. 4,419/-. A revised computation of income for the assessment year 2006-07 (copy at APB 283 to 286) was filed by the assessee before the AO along with letter dated 27.11.06 (copy at APB 287 to 292). In the revised return of income, out of the demerger expenses of Rs. 14,74,347/-, the assessee claimed an amount of Rs. 2,94,869/- as being allowable u/s 35 DD of the I.T. Act, being 1/5th of the said amount of Rs. 14,74,347/-. The balance expenditure of Rs. 11,79,478/- was disallowed. The revised computation (APB 283), in this regard, reads as follows:–

A. <u>Income from Business</u>

<u>Adjustments in accordance with sections 28 to 44</u>

……………………………………

7. Expenditure on account of demerger	Rs. 14,74,347/-	
Less: Allowable u/s 35DD (1/5th of Rs. 14,74,347/-)	Rs. 2,94,869/-	
		Rs. 11,79, 478/-

As such, it is evident that the assessee had claimed expenditure only of Rs. 16,54,531/-. The ld. CIT(A) has duly taken this into consideration. No doubt, the disallowance, if any, could have been made out of this amount only. However, in order to validate such a disallowance, as discussed hereinabove, what was required to be established was the nexus of the expenditure with the earning of the exempt income. The ld. CIT(A), in this regard, has merely observed that the entire balance expenditure of Rs. 16,54,531/- relates to the investment activity of the assessee Company. There is, however, nothing in the impugned order as to how this finding has been arrived at by the ld. CIT(A). It cannot be gain-said that the onus to prove the nexus between the expenditure incurred and the earning of income not forming part of the total income is squarely on the Department. In the absence of discharging this onus, no disallowance in this regard can be made, much less sustained, as has been done by the ld. CIT(A). There is absolutely nothing on record to show that any part of the expenditure was incurred to earn the exempt income. And not only this, as rightly canvassed, this expenditure of Rs. 16,54,531/- even included expenditure towards remuneration to Director and Audit Fees. Now this kind of expenditure, irrespective of the fact whether or not income not forming part of the total income is earned, has to be incurred. Therefore also, these expenses cannot, in any manner, be said to be relatable to earning of exempt income by the assessee company.

34. Thus, looked at from any angle, the ld. CIT(A), in our considered opinion, was not at all justified in holding the entire balance expenditure of Rs. 16,54,531/- incurred by the assessee company as liable to disallowance u/s 14A of the Act. The grievance of the assessee in this regard is, therefore, found to be justified and is accepted as such. The grouse of the Department, on the other hand, is found to be baseless and ground No. 1 raised by the Department is, hence, rejected, whereas Cross Objection No. 1 taken by the assessee is accepted.

35. Turning to ground No.2 raised by the Department, it has been contended that the ld. CIT(A) has erred in deleting the disallowance of Rs. 5,000/- made by the AO on account of fines and penalties. The AO, it is seen, made disallowance of the expenditure of Rs. 5,000/- incurred by the assessee Company on account of fines towards traffic violation. Before the ld. CIT(A), the assessee contended that a similar amount had been allowed as a deduction in the case of the assessee for the assessment year 1990-91 by the Tribunal in ITA No. 2856(Del)93. The ld. CIT(A) deleted the disallowance following the said order of the Tribunal. Before us, the assessee has again pressed into service the Tribunal's order (supra) for the assessment year 1990-91 (copy at APB 225 to 228)in response to the ld. DR's argument that the payment for fines towards traffic violation and the AO had correctly made the disallowance.

36. The facts remaining the same for the year under consideration, as those for the assessment year 1990-91 and following the Tribunal

order, the action of the ld. CIT(A) in deleting the disallowance is confirmed, rejecting Ground No.2 taken by the Department.

37. Turning to ground No.3, the Department contends that the ld. CIT(A) has erred in directing the AO to verify the claim of the assessee and exclude interest income from UTI from income after due verification and to allow the balance 50% of the additional depreciation after verifying the contention of the assessee that 50% additional depreciation was claimed and allowed in the immediately preceding year, i.e., in the assessment year 2005-06 and to verify the claim of the assessee and to allow credit of TDS.

38. In this regard, it is seen that the AO refused to allow additional depreciation @ 7.5% in respect of addition of plant and machinery during the immediately preceding assessment year, i.e., assessment year 2005-06. Before the ld. CIT(A), the assessee contended that in the assessment year 2005-06, the assessee had claimed additional depreciation @ 7.5%, being 50% of additional depreciation of 15%, amounting to Rs. 5,32,65,467/-, in respect of new plant and machinery, installed at the new eligible industrial undertaking of the Company, i.e., Unit No.8, Kathua, u/s 32 (iia) of the Act, since the machinery had been put to use for a period of less than 180 days in that previous year; that the depreciation claimed in the return of income for the assessment year 2005-06 was allowed; that in the return of income for the year under consideration, the assessee had claimed the balance 50% of additional depreciation of 15% of the value of the plant and machinery installed in the immediately preceding assessment year; that this was done through Notes to Accounts appended to the return of income; that this claim was computed at Rs. 1,32,79,884/-, by apportioning 50% of the gross amount of additional depreciation of Rs. 5,32,65,467/- in the ratio of 91 days to the total period; and that however, the AO had not considered this claim made by the assessee.

39. The ld. CIT(A), in the impugned order, observed as follows:–

> *"8.2 Since the appellant is stated to be admittedly eligible for deduction of additional depreciation as 50% of the same has already been duly allowed by the AO in the immediately preceding assessment year 2005-06, there is nothing on record to indicate that the appellant should not be allowed deduction of the balance 50% of deduction in the current assessment year 2006-07. Accordingly, the ld. AO is directed to verify the contention of the appellant that 50% of additional depreciation was claimed and allowed in the immediately preceding assessment year 2005-06 and if this fact is found to be factually correct, the AO is directed to allow the balance 50% of additional depreciation during the year under consideration. This ground of appeal is accordingly treated as allowed for statistical purposes."*

40. There is nothing on record to show that the directions given by the ld. CIT(A) are not proper. The eligibility for deduction of additional depreciation stands admitted, since 50% thereof had already been allowed by the AO in the assessment year 2005-06, i.e., the immediately preceding assessment year. Therefore, obviously, the balance 50% of the deduction is to be allowed in the current year, i.e., assessment year 2006-07. The ld. CIT(A) has merely directed the verification of the contentions of the assessee and to allow the balance additional depreciation after such factual verification. Accordingly, finding no merit therein, ground No. 3 raised by the Department is rejected.

41. Now the only issue remaining is that comprising Cross Objection No. 2 raised by the assessee, which is to the effect that the ld. CIT(A) has erred in not directing the AO in allowing deduction to the assessee under sections 80 IA/80 IB of the Act in respect of the three units of the assessee.

42. The AO refused to allow deduction under sections 80 IA/80 IB regarding the assessee's three units which stood demerged pursuant to the Demerger Scheme approved by the Hon'ble Rajasthan High Court. This demerger came about 1.7.05, as noted hereinabove. The disallowance was ordered by the AO as per the provisions of section 80 IA(12) read with section 80 IB of the Act.

43. Before the ld. CIT(A), the main contention on behalf of the assessee Company was that deduction u/s 80 IB of the Act had not been allowed for the pre-demerger period from 1.4.05 to 30.6.05, either to the assessee Company or to the resulting Company after the demerger.

44. The ld. CIT(A) held the action of the AO to be correct in view of the provisions of section 80 IA(12), as per which, where the eligible undertaking stands transferred in a Scheme of Amalgamation or Demerger, the deduction is allowable only to the resulting Company.

45. Before us, it has been contended on behalf of the assessee that undisputedly, the deduction under sections 80 IA/80 IB of the Act had been claimed with respect to the profit of certain eligible units of the assessee Company; that these units had been part of the assessee company during the pre-demerger period from 1.4.05 to 30.5.05; that these units had been transferred under the Demerger Scheme with effect from 1.7.05; that the deduction claimed was only with respect to the profits earned by these undertakings for the said pre-demerger period only and such deduction had not been claimed in the computation of income but by way of Notes appended to the return of income filed, the said Notes forming an integral part of the return of income; and that prior to the introduction of section 80 IA(12), CBDT Circular No. 15/5/63 – IT(A-I) dated 13.12.63 clarified that deductions under sections 80 IA and 80 IB of the Act were related to the eligible undertaking and accordingly, they got transferred with the undertaking, notwithstanding

the ownership thereof. The learned counsel for the assessee has placed reliance on the following case laws in this regard:-

1. "*CIT vs. P.K. Engg.& Forging Pvt. Ltd.*", 87 Taxmann 101(Cal);
2. "*A.G.S. Timber & Chemical Industries Pvt. Ltd. vs. CIT*", 233 ITR 207(Mad);
3. "*ITO vs. Hindustan Petroleum Corpn. Ltd.*", 25 TTJ (Bom)28;
4. "*Shah Granites Pvt. Ltd. vs. ITO*", 28 TTJ 83(Bom);
5. "*ITO vs. SLM Maneklal Industries Ltd.*", 17 ITD 515(Ahd.);
6. "*ACIT vs. IIS Infotech Ltd.*", 82 TTJ 174(Del);
7. "*Tech Books Electronics Services (P)Ltd. vs. ACIT*", 100 ITD 125(Del);
8. "*ACIT vs. Prisma Electronics*" – ITA Nos. 3378(Del)2009 & 500(Del)2010(Del); and
9. "*ITO vs. Advance Valves Global*" – ITA No. 2096(Del)2008(Del).

45. It has thus been contended that as such, the profits of the undertaking earned by the respective companies, i.e., the respective units, for the period the undertaking was owned by the respective companies, are eligible for deduction under sections 80 IA/80 IB of the Act; that the provisions of section 80 IA(12) merely facilitates the grant of deduction under sections 80 IA/80 IB of the Act to the resulting companies also, in the year of transfer/merger; that while bringing into the Statute Book, the said section 80 IA(12); that the Explanatory Note provides that these provisions have been introduced to make the Corporate Reorganizations tax neutral; that by virtue of the provisions of sections 80 IA/80 IB(12) of the Act, benefit of deduction under the profits earned by the demerger companies, for part of the period cannot, and so, ought not, be denied. It has further been contended that the provisions of the Act which are beneficial to the assessee must be liberally construed, as has been well settled in "*Bajaj Tempo vs. CIT*", 194 ITR 188(SC), "*CIT vs. Strawboard Manufacturing Co. Ltd.*", 177 ITR 431(SC) and "*P.R. Prabhakar vs. CIT*", 284 ITR 548(SC). The learned counsel has then contended that as such, the provisions of sections 80 IA(12) and 80 IB(12) of the Act, being provisions beneficial to the assessee, require to be construed liberally; that deduction under the said sections is allowable to the demerged and resulting company in respect of the profits earned by both the companies for the respective period of ownership of the eligible undertaking in the year of demerger; that the AO has factually erred in observing that no audit report in form No. 10 CCB, as provided under sections 80 IA(12) and 80 IB(12) of the Act was filed; that actually, the audit reports for the respective units were duly filed in the assessment proceedings vide letter dated 7.11.08 by the assessee; that the details of deduction under sections 80 IA(12) and 80 IB(12) of the Act were also given in the tax audit reports, certifying such deduction; that the AO has

also wrongly observed that since the deduction was not claimed in the computation of income, it could not be allowed, in view of "*Goetze India vs. CIT*", 284 ITR 323(SC); that in fact, it remains undisputed that the deduction in question was claimed by way of a Note appended to the original return of income; that in "*CIT vs. Sain Processing and Weaving Mill Pvt. Ltd.*", 325 ITR 565(Del), it has been held that the net profit cannot be determined, without taking into account the information disclosed in the Notes appended to the accounts, which Notes form part of the accounts of the assessee Company.

46. The ld. DR, on the other hand, has strongly supported the impugned order in this regard, submitting that it remains undisputed that under the provisions of section 80 IA(12) of the Act, in a case where the eligible undertaking stands transferred in a Scheme of Amalgamation and Demerger, deduction is allowable only to the resulting company and so, the assessee/demerged company is not at all eligible for deduction under sections 80 IA/80 IB of the Act, as has rightly been held by both the Authorities below concurrently. It has further been contended that it would be wrong to canvass, as has been done in the case of the assessee, that the provisions of section 80 IA of the Act require to be read beneficially to the assessee; that the factual findings of the ld. CIT(A) in this regard are abundantly clear and nothing has been brought on record to dislodge them; that moreover, the AO has categorically observed in the assessment order that no report in form No. 10 CCB was filed by the assessee and it is only by way of an alibi that the assessee now contends to have done the needful in this regard before the AO during the assessment proceedings.

47. On this issue, we find that indeed, as per Circular No. 15/5/63 – IT(A-I) dated 13.12.63 (supra) it has been clarified that deduction under sections 80 IA/80 IB of the Act relates to the eligible undertaking and, accordingly, it transfers with that undertaking, notwithstanding the ownership of such undertaking. The Circular relates that the Board agreed that the benefit of section 84 attached to the undertaking and not to the owner thereof and that the successor would be entitled to the benefit of the unexpired period of 5 years, provided the undertaking was taken over as a running concern. The case laws relied on by the assessee are to a similar effect.

48. In "*Advance Valves*" (supra), following, inter alia, "*P.K. Engg. & Forging*" (supra) and "*A.G.S Timber*" (supra), "*Prisma Electronics*" (supra) and the CBDT Circular (supra) it has been held that it is the successor on demerger, which would be entitled to the benefit for the unexpired period of 5 years, provided the undertaking was taken over as a running concern.

49. So far as regards the claim made by the assessee, it is on record that the assessee had duly filed the audit report in form No. 10 CCB vide letter dated 7.11.08 before the AO, in which audit report, deductions

under sections 80 IA(12)/80 IB(12) of the Act were duly certified to have been claimed by the assessee. It is undisputed that the claim was made by way of a Note appended to the original return of income. It cannot be gain-said that the Note to the return of income formed an integral part of the return. That being the position, obviously, it cannot be held that the deduction was not claimed in the return of income. In this regard, in "Sain Processing" (supra), it has been held that net profit cannot be determined without taking into account the information disclosed in the Notes appended to the Accounts which formed part of the Accounts of the assessee Company.

50. In view of the above, we hold that the AO erred in denying the deduction under sections 80 IA(12)/80 IB(12) of the Act to the assessee and the ld. CIT(A) erred in confirming such disallowance. The grievance of the assessee in this regard is well justified, and Cross Objection No. 2 raised by the assessee is thus accepted.

51. In the result, whereas the appeal filed by the department is dismissed, the Cross Objection filed by the assessee is allowed.

Order pronounced in the open court on 04.05.2012.